In The Matter Of:

ORLY GENGER v.

SAGI GENGER

March 10, 2015

Delores Hilliard

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART - 12

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ORLY GENGER,

Plaintiff

INDEX NUMBER:
100697/08

-against-

SAGI GENGER,

Defendant

----------X

80 Centre Street
New York, New York 10013
March 10, 2015

BEFORE:
HONORABLE: Barbara Jaffe, JSC

APPEARANCES:

Zeichner Ellman & Krause, LLP
Attorneys for Plaintiff
1211 Avenue of the Americas
New York, New York 10036
By: Bryan D. Leinbach, Esq.
-and-
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Delores Hilliard
Vicki K. Glover
Official Court Reporters

THE COURT: Sustained.

MR. HERSCHMANN: I asked if he was aware of it.

THE COURT: Were you aware that she hired a financial advisor?

THE WITNESS: Yes. Yes, as a prelude to the lawsuit.

MR. HERSCHMANN: I move to strike the last part of the answer as not responsive.

THE COURT: Yes, stricken.

Q And that financial advisor was Joel Isaacson & Company, correct?

A Yes.

Q And you had meetings with Joel Isaacson's representatives, correct?

A I don't remember if it's one or -- I don't remember if it's multiple meetings or one meeting, but I certainly met with them.

Q And you provided certain documents to them, correct?

A Honestly, I've seen documents that he said that I provided to them. I gave him documents. I gave them documents, yes.

Q And there was a follow-up request for more documents, correct?

A There probably was. If we have it, it's probably going to be in an e-mail.

parents' separation agreement took effect, that your brother would be involved in a review of the financial information later on?

A I'm sorry. Could you repeat it, please?

Q Sure. I'm trying to give you points in time.

A Yes.

Q So your parents' separation agreement is effective October 30th of 2004. After that date, do you know that there was an arbitration between your parents?

A Yes.

Q To your knowledge, was your brother involved in reviewing information before the arbitration commenced?

A Yes.

Q Now, had Bill Fischer, or Raines & Fischer, been your accountants for as long as you can remember in your life up until the time period that your brother told you he no longer trusted them?

MR. DELLAPORTAS: Objection. Leading.

THE COURT: Yes, try to not do that. It's really inappropriate.

Q Who were your accountants that you used up until 2007?

A Bill Fischer.

Q Had you ever used any other accountants?

A No.

Q Did there come a time when you retained a different

accounting firm?

A Yes.

Q What was the reason that you obtained a different accounting firm?

A Well, around this time in 2007, I was trying to get information about my finances from my brother. He did not want to deal with Bill Fischer and told me that, you know, if I wanted to have any conversations with him about it, I'd have to --

Q I think you have to slow down.

A Sorry.

If I wanted to have any conversations with him about my finances, I would have to work with an accountant that was a new accountant, someone who was independent. So I hired a new accountant.

Q Who did you hire?

A Joel Isaacson.

Q Did Joel Isaacson have anything to do with Raines & Fischer?

A No.

Q Did Joel Isaacson & Associates have anything to do with your father?

A No.

Q How did you come to hire Joel Isaacson?

A A friend of mine referred me to them.

Q And a friend that was independent of Raines & Fischer or your parents?

A Yes.

Q And after you hired Joel Isaacson & Company, then what happened regarding your finances?

A They started trying to help me gather information, and I know they contacted Sagi and tried to get information from him. We tried to set up a meeting, and we finally were able to set up a meeting with Sagi.

Q Do you recall, approximately, when you were able to set up that meeting with your brother?

A I believe it was in November of 2007.

Q Do you recall whether or not your brother had sent information to your new accountants Isaacson & Associates prior to your having a meeting together with your brother?

A No, I know that he didn't.

Q Now, as far as the actual time period of the meeting, do you recall how that actually got set or what transpired?

A How the meeting transpired?

Q Yes.

A Well, as I said, I was trying to get information from my brother. I hired these new accountants, Joel Isaacson, and I knew that my brother had all this information, and we contacted him several times to try to set it up, and we finally --

Q I think you have to slow down.

A We finally were able to set up a meeting.

Q Let me show you what's been marked as Exhibit 234 for identification, and it's been previously discussed in this matter.

(Handing to defense counsel.)

MR. HERSCHMANN: I'm providing a copy again to defense counsel.

(Handing to witness.)

(Handing to the Court.)

Q I'm going to hand you an exhibit, what's been previously marked as Exhibit 228 for identification, which is Bates stamped JI 429. I'm providing again a copy to defense counsel.

(Handing to defense counsel.)

(Handing to witness.)

Q Will you take a look at Exhibit 228 as well?

(Handing to the Court.)

Q I'm going to hand you also what's been marked as 266-135 as well. I'm providing a copy to defense counsel.

(Handing to defense counsel.)

(Handing to witness.)

Q Let me start with Exhibit 266-135.

(Handing to the Court.)

Q Do you see that this is an e-mail from Stan Altmark to your brother?

A Yes.

Q And you've seen this e-mail before today, correct?

A Yes.

Q Now, looking at the e-mail, does it refresh your recollection as to whether or not you had requested via Isaacson & Company certain information in June of 2007 from your brother?

A Yes, I did.

Q And is it accurate that after making requests from your brother in June of 2007, you had not received specific information that you wanted prior to meeting with him?

A Yes.

Q Now, looking at Exhibit 228, if you could, for a moment, have you seen Exhibit 228 previously?

A Yes.

Q And do you recognize this as an e-mail from Joel Isaacson to your brother dated November 6th of 2007?

A Yes.

MR. HERSCHMANN: Your Honor, at this time I would offer Exhibit 228 for identification into evidence.

MR. DELLAPORTAS: Objection. Hearsay.

MR. HERSCHMANN: Your Honor, we're offering it as a communication that was sent as a representative from Orly Genger to her brother. The actual content is irrelevant, except for the fact that he actually received it.

MR. DELLAPORTAS: It's definitely being offered

A Yes.

Q Did your brother in the course of that meeting provide you with any financial information as to where the money had gone from the Canadian ventures?

A No.

Q Let me show you what you has been marked as exhibit 266-71, which is admitted into evidence.

And do you see on the bottom portion of the exhibit 266-71 that there is a reference that the White Paper -- I am sorry, that the White Box papers were supposed to transfer to Jonah from Bill Fischer and then Jonah can be reached at (212) 758-0000.

Do you see that ?

A Yes.

Q Does that refresh your recollection as to who were the accountants for White Box in 2007?

A Yes.

Q Is that Jonah Gayer and Associates?

A I mean, it was supposed to be, it wasn't.

Q Do you know at some point whether Gayer and Associates became the accountants for White Box? And I'm focused on the 2007 time period.

A I don't know that it ever actually switched to Jonah Gayer.

Q Now, going back to the meeting in November, 2007, do

Q And what was the general tenure for what you were looking to get from your brother in the November 2007 meeting?

A Information. Information about my finances.

Q And did you get information that was satisfactory to you from your brother in that meeting?

A No.

Q Let me show you what's been previously received in evidence as Exhibit 230.

MR. HERSCHMANN: Again, I'm providing an extra copy to defense counsel.

(Handing to defense counsel.)

(Handing to witness.)

(Handing to the Court.)

Q Do you recall that after the meeting Isaacson & Associates sent a letter to your brother?

THE COURT: Yeah, this is very leading.

MR. HERSCHMANN: I'm sorry?

THE COURT: Ask a question.

MR. HERSCHMANN: I'm trying to lay a foundation for the exhibit.

THE COURT: It's too leading.

Q First, have you seen Exhibit 230 beforehand?

A Yes.

Q Did you have discussions with Isaacson & Associates before Exhibit 230 was sent to your brother?

A Yes.

Q Directing your attention to Exhibit 230, to the sentence that begins "I appreciate," could you take a look at that?

A Yes.

Q What do you recall being discussed by your brother in relationship to TRI in the November 2007 meeting?

A He wanted to talk about TRI. That's not what I wanted to talk about.

Q And what did he discuss about TRI in the November 2007 meeting?

A I don't remember.

Q Looking at the second page of Exhibit 230, direct your attention to the second paragraph.

A Yeah.

Q It begins, "I do not evaluate your situation to be analogous"...

A Yes.

Q Did you discuss with your brother, in the November 2007 meeting, that he's the one that had all the information?

A Yes.

Q And did your brother, after this letter was sent to him, provide you all the information you wanted in relationship to the Canadian ventures?

A No, he didn't.

MR. HERSCHMANN: Let me see if I can do this again. I apologize, your Honor.

Q You see where your brother says, "I cannot see how I can productively assist you"?

A Yes.

Q Looking at that sentence, how did you interpret that statement from your brother?

A Well, I mean, I know what was going on. I mean, he didn't want to assist me.

Q And why do you say that?

A Because he didn't want to. He just didn't.

Q Did he ever give you the information that you requested, even after this November 15th, 2007 e-mail?

A No.

Q Can you take a look at Exhibit 390 for a moment - that's a check register - again?

A Yes.

Q After your brother sent you this e-mail on November 15th of 2007, can you tell us the last date that you received any money from TPR? Look at page 3 of 3.

A It was November 15th of 2007.

Q And after November 15th of 2007, did you ever receive any more distributions from TPR?

A No.

Q Did you ever receive any of the financial information

dealing with the movement of money from the Canadian ventures?

A No.

Q Did you receive any information about monies that went to TPR?

A No.

Q Did you receive any information about how much money your brother got from TPR?

A No.

Q Did your brother ever discuss with you how much money his wife was getting from TPR?

A No, he didn't.

Q After you asked your brother for the information in November of 2007, did he ever give you any money from TPR, any money individually or any financial information regarding the businesses in which your family was involved?

A After this?

Q Yes.

A No.

Q And then there would come a time, in January of 2008, when you had to file this lawsuit?

A Yes.

MR. HERSCHMANN: Your Honor, can we have a five-minute recess? I may be done.

THE COURT: Okay.

(Witness excused.)

Q Had a question come up from Mr. Genger about whether or not your firm and you were working for somebody else other than Orly Genger prior to the November 8th meeting?

A I'm not sure.

Q Did your firm have any affiliation with Raines & Fischer?

A No.

Q Do you know who Raines & Fischer are?

A I know them now. I had no idea who they were before.

Q Did you communicate that to Mr. Genger in advance of the November 8th meeting that your firm had no affiliation with Raines & Fischer?

A I believe it's the first line in this e-mail.

Q Does that refresh your recollection that you did say that to him?

A Sure.

Q Do you recall why you told him that?

A I assume he had thought we had an affiliation with them.

Q Do you remember anything about that inquiry by Mr. Sagi Genger about whether or not you were affiliated with Raines & Fischer?

A No.

Q What was the purpose of the meeting on November 8, 2007?

A I think the purpose was, we had been retained by Orly to try to get a handle on her finances and tax situation. And the meeting was trying to get documents and information so we could understand better some of the transactions that happened and try and kind of guide Orly as to what her financial life was like, how she could budget, how she could live and, you know, try and give her -- I think she was looking for someone to help guide her as to her finances. She wasn't sophisticated and, you know, trying to understand transactions that had happened that affected her.

Q Prior to the November 8th meeting, did you obtain any documents related to Orly Genger's financial situation?

A Yes.

Q Where did you get those documents from?

A I believe some came from Sagi and some came from the accounting firm and some, probably, from Orly.

Q When you say the accounting firm, you mean Raines & Fischer?

A Yes.

Q In this communication you had with Mr. Genger on November 6th, 2007, did you ask him for additional documents or additional information?

A Can I read the e-mail?

Q If you don't recall, you can look at the e-mail to refresh your recollection.

A Let me just recall it. Thank you.

Q Okay.

(Pause in proceedings.)

A Yes. I think there was also -- it reiterated asking for documents. It seems like there's a line that she's entitled to them, documents, that weren't being sent.

Q Weren't being sent by whom?

A Sagi.

Q And what was -- I mean, what kinds of documents were you asking for that you weren't getting from Sagi Genger in this timeframe?

A Again, you know, I don't have it in front of me, but I believe we're asking for documents related to tax returns and financial statements and, you know, probably, you know, entities.

Q Business entities?

A (Witness nodding.)

Q You got to answer out loud for the record instead of nodding your head.

A Yes.

Q So business entities, the answer was yes?

A Yes.

Q Do you remember what business entities you were asking for information from Sagi Genger about?

A I mean, to the best of my recollection now, I know

things that he wanted to discuss. I can't say, you know, specifically right now seven years after the meeting.

Q Well, how did the meeting end? Do you recall?

A No.

Q After the meeting was over, what was your general impression how the meeting went?

A I think, again, you know, there was a sense of evasiveness from Sagi on a lot of the questions, and there was a sense that a lot of the things we were asking weren't being answered, indirect, and that there were a lot of documents that were still missing, at that standpoint, and a lot of information still missing.

Q By the way, did Dalia Genger speak at the meeting?

A I believe so.

Q Was she able to speak freely?

A Sure.

Q Did Sagi Genger ever direct her not to speak?

A I don't know.

Q Did you get information out of Dalia Genger that you thought was useful or helpful?

A I don't know.

Q After having that general impression at the end of the meeting, what steps, if any, did you take next with respect to your work relationship with Orly Genger?

A I believe there was a follow-up e-mail after the

J. Isaacson - by Plaintiff - Direct/by Mr.Bowen

Q Did you get more documents and more information out of Sagi Genger?

A I don't believe so.

Q Were you asking for more documents and more information from him?

A Yes.

Q Let me show you what has been marked for identification as exhibit 229. And we are almost done.

I'm providing a copy to counsel.

If you look at this document, Mr. Isaacson, you will see it is a covered e-mail and attachment.

Do you recognize this document?

A Yes.

Q Just, generally, what do you recognize it to be?

A It looks like an e-mail and an attachment of a memo.

Q And the e-mail is a communication to Mr. Sagi Genger, correct?

A Yes.

Q This is dated after the meeting in '07?

A It was dated Monday the 12th.

Q 2007?

A Yes.

Q And the attachment is a two page memorandum referring your attention to a document.

Is that memorandum created in the ordinary course of

I don't think I admitted, 228, I did --

MR. DELLAPORTAS: No, 228 was not in evidence. Exhibit 229 was admitted.

THE COURT: Not 228.

MR. HERSCHMANN: Exhibit 228 was previously admitted, but the reporter marked it on the sticker as 229.

Exhibit 229 is the thing we just covered just now.

THE COURT: This says 3/27, which is today's date.

MR. BOWEN: I think I know what happened. May I see it for a second, please?

Yes. This is the one we offered and Mr. Dellaportas objected to it. And I didn't reoffer it, so it should not be in evidence.

Exhibit 228 is not in evidence.

MR. BOWEN: If I may, Judge?

THE COURT: Yes.

Q So, Mr. Isaacson, I don't want to spend a lot of time on this, but if you look at the memorandum page, the second page of the exhibit of the memo that was communicated to Sagi Genger. And it reads, quote, "Thank you for the documents you have provided us at the meeting on November 8, 2007."

Were some documents provided by Sagi Genger at that meeting?

A I believe so.

Q Do you remember what they were?

A No.

Q Then, this goes on to say, we have reviewed the documents and determined that we were not provided with all of the information asked for by Joel in 2007.

Joel is a reference to you?

A Yes.

Q The e-mail that that is referring to is what we marked as 228, which is not in evidence, but that you looked at earlier this morning?

A Yes.

Q Then, this goes on to say, we continue to request the following.

And then there are some items that are listed there.

This was the information that you were still continuing to try to get from Sagi Genger?

A Yes.

Q Did you ever get this information from him?

A I don't believe so.

Q If you go to the last page, there is a paragraph that reads, as discussed we are planning to meet again on Monday, November 19th, at my office. Please confirm that 3 PM will work for you and your mother.

Did that meeting occur?

A No. I believe there was some confusion where it was canceled by Sagi. And then I think he actually showed up at our

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Orly Genger, etc., Plaintiff-Respondent, v Dalia Genger, et al., Defendants-Appellants.

11871, 109749/09

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

120 A.D.3d 1102*; *993 N.Y.S.2d 297*; *2014 N.Y. App. Div. LEXIS 6204*; *2014 NY Slip Op 06248

September 23, 2014, Decided
September 23, 2014, Entered

NOTICE:

THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION. THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

PRIOR HISTORY: *Genger v. Genger, 115 A.D.3d 421, 982 N.Y.S.2d 11, 2014 N.Y. App. Div. LEXIS 1386 (N.Y. App. Div. 1st Dep't, 2014)*
Genger v. Genger, 39 Misc. 3d 1235(A), 972 N.Y.S.2d 143, 2013 N.Y. Misc. LEXIS 2304 (2013)

COUNSEL: [***1] Pedowitz & Meister, L.L.P., New York (Robert A. Meister of counsel), for Dalia Genger, appellant.

Morgan, Lewis & Bockius LLP, New York (John Dellaportas of counsel), for Sagi Genger and TPR Investment Associates, Inc., appellants.

Ira Daniel Tokayer, New York, for D & K GP LLC, appellant.

Zeichner Ellman & Krause LLP, New York (Brian D. Leinbach of counsel), for respondent.

JUDGES: Tom, J.P., Friedman, Acosta, Andrias, Richter, JJ.

OPINION

[*1102] [**298] Order, Supreme Court, New York County (Barbara Jaffe, J.), entered May 31, 2013, which, insofar as appealed from, denied the motions of defendants TPR Investment Associates, Inc. (TPR) and D & K GP LLC (D & K GP) to amend their answers and for summary judgment dismissing the claims against them, granted plaintiff's cross motion for sanctions against TPR, D & K [*1103] GP, defendant Dalia Genger (Dalia), and defendant Sagi Genger (Sagi), sanctioned defendant Leah Fang (Fang), and denied Fang's motion for summary judgment dismissing the claims against her, unanimously modified, on the law and the facts, to delete the sanctions against Dalia, Sagi, and Fang, and to grant Fang's motion for summary judgment dismissing the claims against her, and otherwise affirmed, without costs. [***2]

Contrary to the motion court's statement, plaintiff did not cross-move for [**299] sanctions against Fang. Furthermore, Fang did not disobey the 2010 and 2011 injunctions -- she resigned as trustee of indirect plaintiff the Orly Genger 1993 Trust (Orly Trust) in January 2008 and had nothing to do with the 2011 and 2012 settlements challenged by plaintiff. Hence, there was no basis for sanctioning Fang.

Plaintiff's *cross* motion for sanctions was improper as against Dalia and Sagi, who were not movants (*see e.g. Kershaw v Hospital for Special Surgery, 114 AD3d 75, 978 N.Y.S.2d 13 [1st Dept 2013]*).

TPR and D & K GP contend that they should not have been sanctioned because they did not violate the 2010 and 2011 injunctions. This argument is unavailing.

Assuming, arguendo, that the 2010 order merely enjoined transfers, sales, pledges, assignments, or other dispositions of TPR shares (as opposed to transfers, etc., of the Orly Trust's interest in double-derivative plaintiff D & K LP), Orly Trust disclaimed any interest in any shares of TPR via the settlement agreements.

It is true that the October 2011 settlement predated the December 2011 injunction; however, the parties to the settlement amended and restated their agreement in March 2012, i.e., after the injunction. The 2011 order [***3] enjoined Sagi, TPR, and Dalia "from making demands upon and using or spending the proceeds derived from the purported sale by TPR . . . to [nonparty] Trump Group . . . of . . . the Orly Trust['s shares of nonparty Trans-Resources, Inc. (TRI)] . . ., pending the determination by a court of competent jurisdiction [of] the beneficial ownership of such shares." The promissory note which is a part of both settlement agreements -- and which replaced a note that D & K LP had given in 1993 (the 1993 Note) -- provides that the principal and accrued interest shall be due "[i]mmediately upon [Orly Trust]'s receipt of the proceeds from the sale of [its] TRI shares."

In sum, the motion court properly found that TPR and D & K GP had disobeyed "a lawful mandate of the court" (*Judiciary Law § 753[A][3]*) and properly ordered them to pay plaintiff's attorneys' fees (*see Davey v Kelly, 57 AD3d 230, 869 N.Y.S.2d 37 [1st Dept 2008]*).

For the reasons discussed in the following paragraph, it was a [*1104] provident exercise of the IAS court's discretion to deny TPR's and D & K GP's motions to amend their answers to add the defense of release, based on the release contained in the October 2011 and March 2012 settlement agreements, because the proposed amendment lacked merit and would be futile (*see Eighth Ave. Garage Corp. v H.K.L. Realty Corp., 60 AD3d 404, 405, 875 N.Y.S.2d 8 [1st Dept 2009], lv dismissed* [***4] *12 NY3d 880, 910 N.E.2d 1003, 883 N.Y.S.2d 174 [2009]*). For the same reasons, the court correctly denied the motions by TPR and D & K GP for summary judgment dismissing the claims against them based on the same release.

When a fiduciary has a conflict of interest in entering a transaction and does not disclose that conflict to his/her principal, the transaction is "voidable at the option of" the principal (*Wendt v Fischer, 243 NY 439, 443, 154 N.E. 303 [1926]*). Moreover, "an agent cannot bind his principal . . . where he is known to be acting for himself, or to have an adverse interest" (*Manhattan Life Ins. Co. v Forty-Second St. & Grand St. Ferry R.R. Co., 139 NY 146, 151, 34 N.E. 776 [1893]*). In entering into the aforementioned October 2011 and March 2012 settlement agreements with TPR and D & K LP on behalf of Orly Trust, of which she was sole trustee, Dalia [**300] had a conflict of interest. The new promissory notes executed by Dalia on behalf of Orly Trust pursuant to the settlement agreements contained provisions that were plainly intended to entrench her as sole trustee of Orly Trust, notwithstanding the ongoing disputes and litigation between herself and plaintiff, the trust's beneficiary. Specifically, the replacement notes provided that Dalia's resignation or removal as trustee of Orly Trust, or the appointment of any additional trustee, would constitute an event of default rendering the notes [***5] immediately due and payable by Orly Trust. Further, the purported settlement of the derivative claims that plaintiff asserts on behalf of Orly Trust in this action -- which was already pending at the time the settlement agreements were executed -- required the court's approval, which was never sought. Moreover, as previously discussed, the settlements were entered into in violation of the aforementioned 2010 and 2011 injunctions. For these reasons, the settlements are voidable and, given the expressed intention of plaintiff (the beneficiary of Orly Trust) to void them, the purported releases they contain are not enforceable.

Fang moved for summary judgment based on additional releases given to her by Dalia (as trustee of Orly Trust) in December 2007 and January 2008. As no infirmity has been demonstrated in the December 2007 and January 2008 releases, the IAS court should have granted Fang summary judgment [*1105] based on these instruments.

This determination renders moot the portion of Fang's motion that sought summary judgment based on the infirm releases in the 2011 and 2012 settlement agreements.

The Decision and Order of this Court entered herein on March 4, 2014 is hereby recalled and vacated [***6] (*see* M-1592 and M-1606 decided simultaneously herewith).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 23, 2014

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE J.S.C. Justice

PART 12

Index Number : 109749/2009
GENGER, ORLY
VS.
GENGER, DALIA
SEQUENCE NUMBER : 034
COMPEL DISCLOSURE

INDEX NO. 109749/0C

MOTION DATE

MOTION SEQ. NO. 034

The following papers, numbered 1 to ____, were read on this motion to/for Compel

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ____ No(s). ____

Answering Affidavits — Exhibits ____ No(s). ____

Replying Affidavits ____ No(s). ____

Upon the foregoing papers, it is ordered that this motion is

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 7/3/14

BARBARA JAFFE, J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION

2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☒ DENIED ☐ GRANTED IN PART ☐ OTHER

3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER

☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

----------x

ORLY GENGER, in her individual capacity and on behalf of the Orly Genger 1993 Trust (both in its individual capacity and on behalf of D & K Limited Partnership),

Plaintiff,

-against-

DALIA GENGER, SAGI GENGER, LEAH FANG, D & K GP LLC, and TPR INVESTMENT ASSOCIATES, INC.,

Defendants.

----------x

Index No. 109749/2009

Motion seq. nos. 034, 035

DECISION AND ORDER

BARBARA JAFFE, JSC:

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In motion sequence number 034, defendants TPR Investment Associates, Inc. (TPR) and Sagi Genger (collectively, TPR/Sagi) seek an order compelling plaintiff Orly Genger and nonparties Arie Genger and Mark Hirsch to attend additional depositions and answer questions about the settlement agreement entered into by Orly, Arie and the so-called Trump Group in or about June 2013. (NYSCEF 539). In motion sequence number 035, Arie seeks a protective order preventing further deposition of him by TPR/Sagi. (NYSCEF 550). These motions are consolidated for disposition.

I. BACKGROUND

The background pertinent to these motions is set forth in several opinions of this court and others, including my decision dated December 23, 2013, rendered in the related action, *Genger v Genger*, Index No. 651089/2010. (NYSCEF 700). In that decision, I denied TPR/Sagi's motion for an order compelling Arie and Orly to disclose the terms of the June 2013 settlement. TPR/Sagi filed this motion seeking essentially the same relief, and before I issued the December decision. And, in another decision in that action, dated March 20, 2014, I denied TPR/Sagi's motion for an order enjoining Orly from implementing or accepting the benefits of the settlement, thereby rejecting their contention that Orly should be restrained from enjoying or using the proceeds for her own benefit as the proceeds belong to the Orly Trust. (NYSCEF 925).

In light of the foregoing, and given the protracted history of these litigations, familiarity with the factual background, rulings, and rationales set forth in the December and March decisions is presumed.

II. DISCUSSION

TPR/Sagi allege that as the Orly Trust receives no consideration for releasing its claims against the Trump Group, the party that funded the settlement, and that Orly has pocketed the proceeds for her own benefit, there is "a clear conflict of interest between Orly and the Orly Trust, which would militate for dismissal of Orly's derivative claims against Sagi and TPR on the grounds that she is no longer an adequate representative." They thus argue that the settlement agreement is relevant to their defenses in this action, as opposed to the 2010 action addressed in my December 2013 decision, and that Orly, as a derivative plaintiff, has no standing to bring claims on behalf of the Orly Trust given the conflict of interest and her inadequate representation

of the Trust's interests. (NYSCEF 547).

Having settled claims against the Trump Group in her individual capacity and as beneficiary of the Orly Trust, and absent anything prohibiting the Orly Trust from prosecuting claims against the Trump Group, there is no conflict between Orly and the Trust. And, it is undisputed that TPR/Sagi sought to obtain proceeds of the sale of the Orly Trust shares to the Trump Group, which proceeds are also claimed by the Orly Trust. Moreover, in a recent opinion issued by the Southern District of New York in *TPR Inv. Assoc., Inc. v Pedowitz & Meister LLP*, 2014 WL 1979932, *6 (SD NY, May 15, 2014), although TPR was found to be entitled to the proceeds, the court also observed that nothing therein "should be construed as resolving any question other than whether TPR is the next (but not necessarily last) beneficiary of the sale of the Orly Trust Shares." Consequently, given TPR/Sagi's struggle with the Trust over the proceeds, their bona fides in expressing concern for the Trust is questionable at best.

Additionally, Dalia, trustee of the Orly Trust, has often sided with her son Sagi in these actions, and if Orly is deemed to be an inadequate representative of the Orly Trust, and Dalia declines to pursue the Orly Trust claims against TPR/Sagi, TPR/Sagi could be insulated from the prosecution of such claims. However, after TPR/Sagi filed this motion, the Appellate Division, First Department, held that Dalia had a conflict of interest in releasing herself, as part of settlement agreements entered into in 2011 and 2012 between TPR/Sagi and herself, as trustee. It also adjudged the settlements, which were against Orly's interests, as void and/or voidable. (*Genger v Genger*, 115 AD3d 421, 423 [1st Dept 2014]). Thus, Dalia may no longer be able to serve as trustee, having failed to disclose the conflict to her principal, Orly. And, as noted by the First Department, Orly had petitioned the Surrogate's Court to remove Dalia as trustee and to

surcharge her. (*Id.*).

To the extent that there exist any issues as to which claims filed by Orly against the Trump Group belong to Orly individually or are derivative claims of the Orly Trust, and whether the derivative claims were released pursuant to the settlement agreement, as I observed in my March 2014 decision, those are matters for the parties to the settlement agreement.

This action does not involve the Trump Group, the party that is released under the settlement agreement. Rather, this action concerns Orly's allegation of "a sham UCC sale" orchestrated by Dalia and Sagi in 2009 with respect to the so-called 1993 Note that was never intended to be collected or enforced. Thus, TPR/Sagi have not demonstrated that the settlement agreement is relevant to their defenses. (NYSCEF 549 at 1). And it is undisputed that the settlement agreement settles no claims asserted by Orly in this action. Thus, there is no need to depose Orly about the settlement agreement.

As it is also undisputed that neither Arie nor Hirsch, an officer of the Trump Group, are parties to this action, there is no basis for deposing them about the settlement agreement.

TPR/Sagi also rely on a recent pleading filed by the Trump Group in the 2010 action (NYSCEF 888) whereby it raises a defense pursuant to General Obligations Law § 15-108 (b) to the cross claim for contribution asserted against it by TPR/Sagi. They argue that the pleading reflects the divergent positions taken by Orly and the Trump Group as to whether the settlement agreement settled derivative claims and, thus, according to TPR/Sagi, "one of these parties is lying to the Court." (NYSCEF 638 at 2). Per my holding in the December decision, the settlement agreement "has no bearing on anything other than a possible offset at the end of the trial," and that even though the settlement terms may be useful in assessing maximum exposure

under §15-108, "such strategizing [to obtain the settlement terms] has no bearing on the underlying issues of fault and damages." (NYSCEF 700 at 1). I thus found that "other than trial strategy, TPR/Sagi fail[ed] to advance a sufficient reason supporting its request for pre-verdict disclosure of the settlement agreement." (*Id.*). The same holds true here.

III. CONCLUSION

Accordingly, it is hereby

ORDERED, that the relief requested in motion sequence number 034 by TPR Investment Associates, Inc. and Sagi Genger (TPR/Sagi) seeking to compel additional depositions of the named deponents is denied; and it is further

ORDERED, that the relief requested in motion sequence number 035 by nonparty Arie Genger for a protective order to prevent further depositions of him by TPR/Sagi is denied as moot.

ENTER:

Barbara Jaffe, JSC

Dated: July 3, 2014
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: BARBARA JAFFE J.S.C. Justice

PART 12

Index Number : 651089/2010
GENGER, ARIE
vs.
GENGER, SAGI
SEQUENCE NUMBER : 023
OTHER RELIEFS

INDEX NO. 651089/10

MOTION DATE

MOTION SEQ. NO. 023

The following papers, numbered 1 to ____, were read on this motion to/for other reliefs

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ____ | No(s). ____

Answering Affidavits — Exhibits ____ | No(s). ____

Replying Affidavits ____ | No(s). ____

Upon the foregoing papers, it is ordered that this motion is

3/21/14 mk

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: MAR 21 2014

BJ J.S.C.

1. CHECK ONE: ..... ☐ CASE DISPOSED ☑ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☑ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 12

----------x

ARIE GENGER and ORLY GENGER, in her individual capacity and on behalf of THE ORLY GENGER 1993 TRUST,

Plaintiffs,

-against-

SAGI GENGER, TPR INVESTMENT ASSOCIATES, INC., DALIA GENGER, THE SAGI GENGER 1993 TRUST, ROCHELLE FANG, individually and as trustee of THE SAGI GENGER 1993 TRUST, GLENCLOVA INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP AND MARK HIRSCH,

Defendants.

----------x

SAGI GENGER, individually and as assignee of THE SAGI GENGER 1993 TRUST, and TPR INVESTMENT ASSOCIATES, INC.,

Cross-Claimants, Counterclaimants, and Third-Party Claimants,

-against-

ARIE GENGER, ORLY GENGER, GLENCLOVA INVESTMENT COMPANY, TR INVESTORS, LLC, NEW TR EQUITY I, LLC, NEW TR EQUITY II, LLC, JULES TRUMP, EDDIE TRUMP, MARK HIRSCH, TRANS-RESOURCES, INC., and WILLIAM DOWD,

Cross-Claim, Counterclaim and/or Third-Party Claim Defendants.

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Index No. 651089/10

Motion Seq. No. 023

DECISION AND ORDER

BARBARA JAFFE, JSC:

Sagi Genger (Sagi), The Sagi Genger 1993 Trust (Sagi Trust) and TPR Investment Associates, Inc. (TPR) ask that I 1) decline to "so-order" a stipulation of settlement, unless and until the settlement and all settlement-related documents have been produced to all interested

parties; and 2) enjoin and restrain plaintiff Orly Genger from implementing, accepting consideration from, or in any way enjoying the benefits of the settlement, unless and until movants' arguments about the settlement have been heard. Orly opposes the motion.

I. BACKGROUND

The parties to the settlement referenced in the stipulation are, primarily, Arie Genger, Orly Genger and the Trump Group, composed of Glenclova Investment Company, TR Investors, LLC, New TR Equity I, LLC, New TR Equity II, LLC, Jules Trump, Eddie Trump, and Mark Hirsch. Movants ask that I not so-order the stipulation because 1) Orly settled derivative claims belonging to the Orly Trust; and 2) the Sagi Trust, the remainderman beneficiary of the Orly Trust, will be harmed if Orly is not enjoined from taking the settlement proceeds for herself, as such proceeds belong to the Orly Trust, not to Orly personally.

After being provided with a copy of the settlement agreement for *in camera* review, a conference call was held with me on June 27, 2013 and all the parties in interest, including counsel. (NYSCEF 487). As a result of the conference call, a statement was inserted into the stipulation reflecting that Orly had settled her claims against the Trump Group "in her individual capacity and as beneficiary of" the Orly Trust. The statement was initialed by counsel for Orly, Arie, and the Trump Group. Because the stipulation was so-ordered, the request that I decline to do so is moot, as is the request for the production or disclosure of the settlement agreement and related documents, which I denied by order dated December 18, 2013, rendered in a closely related, if not substantially identical, matter. (NYSCEF 700).

The remaining issues raised in this motion are whether Orly settled derivative claims of the Orly Trust, and if so, whether she should be enjoined from taking and using proceeds of the

settlement for her sole benefit. Movants allege that, although the stipulation specifies that Orly settled claims against the Trump Group in her individual capacity and as beneficiary of the Orly Trust, she actually settled derivative claims belonging to the Orly Trust. Thus, they argue that the settlement proceeds belong to the Orly Trust. They rely in large part on a letter to me dated June 28, 2013 in which counsel for the Trump Group states, in relevant part, that "[c]ertain of Orly Genger's claims against the Trump Group in this action have been held by Justice Feinman to be derivative in nature," and that "[e]xcluding such claim from the claims that are to be dismissed is not what the Trump Group bargained and paid for in the settlement . . . ." (NYSCEF 485). At oral argument, counsel for the Trump Group explained that the stipulation submitted to me for approval indicated that "Orly was signing in whatever capacities she has," and that the so-ordered stipulation "supersedes" the arguments advanced in the June 28 letter. (NYSCEF 651 at 6, 8). In essence, the parties to the settlement agreement concur that the only claims released by Orly against the Trump Group were those "that Orly made on her own behalf and as a beneficiary of the [Orly Trust]" (NYSCEF 651 at 11), and that the Trump Group agreed to the language inserted in the so-ordered stipulation (NYSCEF 651 at 12 ["Your Honor, my colleague, Mr. Allingham, signed the interlineated order as you entered it. We agree to whatever that order is."]).

Dalia Genger, trustee of the Orly Trust, neither filed nor joined in the instant motion. Instead, she signed an affidavit, dated June 28, 2013, asserting that "an analysis of the claims [filed by Orly against the Trump Group] shows that they are entirely claims of the Orly Trust and that she has no individual rights separate therefrom." (NYSCEF 483, ¶ 2). Dalia's assertion is not supported or accompanied by any analysis of the subject claims, and is fatally conclusory.

Similarly, movants only "suspected" that "derivative Orly Trust claims" were settled in the settlement agreement, and now allege that their suspicion is bolstered by the June 28 letter. (NYSCEF 577, ¶ 6). And, having found that "Dalia - as trustee of Orly's Trust - had a conflict of interest in releasing herself as part of the October 2011 and March 2012 settlement agreements [embodying the proposed transactions]" (*Genger v Genger*, -- AD3d --, 2014 NY Slip Op 01421 *2 (1st Dept 2014), the Appellate Division throws doubt on Dalia's standing to complain.

In the settlement agreement, Orly stops short of releasing derivative claims. Rather, in paragraph 8 of the agreement, she only agrees to "cooperate" and "cause" the Orly Trust to release any and all claims against he Trump Group. At any rate, and to the extent that there remain issues of fact and law as to which claims filed by Orly against the Trump Group belong to Orly individually and/or are derivative claims belonging to the Orly Trust, I invite the parties to the settlement agreement to set forth the claims given up by Orly in her individual and beneficial capacities, and to explain why any derivative claims advanced in the complaint are not released by the agreement. Unless and until the issue of derivative claims is resolved, I cannot determine whether some or all of the settlement proceeds with the Trump Group belong to Orly or the Orly Trust, particularly when the Sagi Trust has asserted a contingent remainderman interest in the Orly Trust.

Orly's counsel also challenges the legal standing of the Sagi Trust in making this motion, as it is undisputed that TPR has no interest in the Orly Trust. At oral argument, counsel contended that given Orly's youth and good health, the Sagi Trust's interest "is only contingent, and if [Orly] does have issue, it is destroyed forever," and thus such interest "is speculative at best." (NYSCEF 651 at 13; NYSCEF 548 at 3). Counsel also noted that even though a

contingent remainderman has "limited standing," movants cite no authority "allow[ing] them to highjack [sic] a settlement based upon contingent remainderman status." (NYSCEF 651, at 14). As movants seek injunctive relief against Orly, they must establish their standing to pursue such relief, which they have failed to do. Hence, the requested relief is denied without prejudice.

Although I have reviewed the settlement agreement and so-ordered the related stipulation, in accordance with *Mahoney v Turner Constr. Co.* (61 AD3d 101 [1st Dept 2009]), signing the stipulation only resolves the parties' dispute regarding whether the terms and related documents should be produced or disclosed.

Accordingly, based on the foregoing, it is hereby

ORDERED, that the branch of the instant motion seeking an order declining to "so-order" that certain "Second Amended Stipulation of Discontinuance with Prejudice," dated as of June 20, 2013 (the Stipulation), is denied as moot; it is further

ORDERED, that the branch of the instant motion seeking, in effect, an order requiring the disclosure or production of that certain settlement agreement referenced in the Stipulation is denied as moot; and it is further

ORDERED, that the branch of the instant motion seeking to enjoin or restrain plaintiff from implementing, accepting consideration from, or in any way enjoying the benefits of the settlement agreement is denied without prejudice.

ENTER:

Barbara Jaffe, JSC.

Dated: March 20, 2014
New York, NY

FILED: NEW YORK COUNTY CLERK 08/22/2012 INDEX NO. 109749/2009
NYSCEF DOC. NO. 318 RECEIVED NYSCEF: 08/22/2012

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - CIVIL BRANCH - PART: 12

----------X

ORLY GENGER, in her Individual capacity and on behalf of the Orly Genger 1993 Trust (both in its individual capacity and on behalf of D & K Limited Partnership,

Plaintiffs,

-against-

INDEX NO. 109749/09

DALIA GENGER, SAGI GENGER, LEAH FANG, D & K GP, LLC, and TPR INVESTMENT ASSOCIATES, INC.,

Defendants.

----------X

60 Centre Street
New York, New York 10007

August 15, 2012

B E F O R E:

HONORABLE PAUL G. FEINMAN, Justice

A P P E A R A N C E S:

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AT

Proceedings

Continued

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SKADDEN ARPS
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BY: TONY ARDEN, ESQ.

ALSO PRESENT:
Attorneys who did not note their appearances

ANGELA TOLAS, CSR
OFFICIAL COURT REPORTER

* * *

THE COURT: When I looked yesterday I haven't seen anything in opposition. Has opposition since been filed, or what's the story on that?

MR. DELLAPORTAS: John Dellaportas for TPR. TPR has filed opposition, submitted courtesy copies, and I have an extra copy for your Honor.

THE COURT: One copy is enough, thanks.

MR. MEISTER: Dalia Genger e-filed this morning

opposition papers about 10:00 o'clock, and we also submitted a working copy for your Honor.

MR. HOFFMAN: Mathew Hoffman for Leah Genger. We filed opposition papers this morning.

THE COURT: All right, I haven't read any of your opposition papers because I looked at it yesterday. Actually three of us looked at it yesterday because we were also working on the papers in the related action.

Okay, so let's hear what you have to say in opposition, Orly, then, and I'm familiar with what the movant's arguments are. Why don't you go first since you have Dalia.

MR. MEISTER: I will, your Honor. Robert Meister, representing Dalia Genger, your Honor. I'll try to summarize what's in our papers. We start by pointing out that the claims that are asserted in this action largely are claims that belong to Dalia Genger as trustee of the Orly Genger trust. We point out that although the plaintiff obviously doesn't like the fact that Dalia Genger is the trustee, her service as trustee was confirmed by the Surrogate's Court by express quarter including --

THE COURT: The Surrogate said, you know, basically she should be given a chance to try out, in essence. That's when I reread Judge Roth's decision that at the time of the original objection to her, or the challenge

to her, she hasn't been given a chance to serve.

I just don't understand why somebody would want to continue to serve as the trustee of her daughter's trust when the daughter doesn't want her. Why not just say: Okay. I'm out of this. You want to have a fight with your brother, have a fight with your brother. If you want to have a fight with your father, have a fight with your father.

I mean, unless there is some truth to the conspiracy theories asserted by the plaintiffs, why is she continuing to serve? Why doesn't she resign? Who needs this aggravation?

MR. MEISTER: Your Honor, I'm not the trustee. I do --

THE COURT: No, but you represent her, so I'm assuming you've discussed these possibilities. You know, you want to get yourself out of this litigation, resign as trustee.

MR. MEISTER: One might assume that when I first came in to handle the appeal that Orly took from the Surrogate's order, that would have been one of the first questions that I would have asked. But I don't think it's appropriate for me to testify as to --

THE COURT: No, I'm not asking you, I'm just throwing it out there as something that crosses my mind.

MR. MEISTER: It's been thrown out also by the law department in Surrogate's Court, why would a mother want to insist on protecting her daughter from the machinations of her husband, ex-husband, to whom the daughter is enthralled, and seems intent to do everything he can to disadvantage the daughter, who is not very sophisticated. I can only say that --

THE COURT: That's one way of putting it. Another way is protecting her from the machinations of her brother who seems to be obsessed with some issue with the father. Trust me, there are no saints in this.

MR. MEISTER: Respectfully, your Honor, may I point out that as trustee under the terms of the trust, the trustee draws no commissions. That Dalia Genger has had to reach in her pocket deeply to pay legal fees, both my predecessor in the Surrogate's Court, and my firm in this action, and in other actions, and it's costly.

And all I can say is my mother, who's no longer with us, had a great love for her children. And I think Dalia Genger is demonstrating her love for her daughter who doesn't respect her, who refuses to speak with her, and makes the most unfounded allegations. And I trust that the Court is noting the allegations without necessarily crediting them where there is no evidence. In any event--

THE COURT: My point is, you know, if no good deed

goes unpunished, you know, why not resign and let the Surrogate Court appoint a complete outsider to this family, and that way that outsider supposedly operates as a neutralizing force.

MR. MEISTER: It certainly would be an option, your Honor, assuming that a true outsider would step into this hornet's nest where by the terms of the trust the outsider is not going to get compensated. I wouldn't do it. My guess is JP Morgan Chase wouldn't do it. US Trust wouldn't do it. But in any event it hasn't happened.

As to what the Surrogate's Court did decide, the Surrogate's Court did expressly reject the argument that there should be a special trustee for the purpose of investigating discovering the alleged wrongful dealings. The wrongful dealings then were conspiracy between Dalia, and I take it this is all from the Surrogate Court opinion, conspiracy between Dalia and Sagi to take money for Dalia. Thus far there has been not one shred of evidence that Dalia has received a single benefit from anything here. But insofar as this motion is concerned, the fact remains that Orly did not perfect her appeal from Surrogate Roth's decision, and that's the law. That she, Dahlia, is the trustee.

The second thing that's pertinent to this motion is the status quo ante, ante all the various things of which

Orly is now complaining. And the status quo ante was that the trust owed over four-and-a-half million dollars by the D & K note which the trusted guaranteed which was 48 percent of.

What's happened here is, first, the Delaware Supreme Court handed down its decision stating that record ownership was not transferred to the TRI shares, but leaving open the question of economic beneficial ownership to the TRI shares. And in that context, the trustee reached a settlement. The settlement is outlined extensively in a settlement agreement. It resulted in the trust owing less money. It resulted in the trust receiving $100,000 payment. It resulted in the cutting, if you will, of the trust ties to D & K which had the effects of, in effect, canceling the two agreements that the amended complaint complains of the so-called meeting agreement and the second amended restated D & K partnership agreement.

And so there was substantial benefits to the trust for this. Perhaps the biggest benefit was that as part of the settlement TPR relinquished in writing to the trust all economic interest in the TRI shares. Now that's a benefit that was left open by the Supreme Court of Delaware. It's a benefit which is worth at least the $10.3 million dollars that's in escrow, it's a benefit which if Orly's representations to this Court, among others, are to be

believed, the last figure I heard from my colleagues on the other side was $150 million, and TPR transferred that, in effect, to the trust, the Orly trust.

So it seems to be the type of settlement that courts should support. Of course we cited some cases in our papers that settlements are favored by courts that will not be any surprise to your Honor, and we also point out that although it is indeed possible that Orly, if she plows through this won't like this because she doesn't seem to like anything, she can sue in the Surrogate's Court for a surcharge action. But most importantly here the settlement is one supported by a very substantial consideration.

After the settlement, your Honor, which resulted in the debt being codified by a $4 million note to TPR which paid, in addition to the other consideration, I think I mentioned, gave $100,000 cash to the trust so the trust could pay legal fees. Subsequent to that, TPR informed us that it was in the process of selling that note to this company called Manhattan, and making a long story short there was an agreement with Manhattan to have a new note. Manhattan loaned $200,000 to the trust and agreed to loan an additional $200,000 if the trust requests it. And there was a new note, or actually two knew notes, one existing and one to cover the possibility of the second one as well.

If you add up all those notes, the trust owes less

than it did to D & K before all this. Plus the trust has thus far $200,000 in the bank and has received, as a loan, and has received $100,000 from TPR. None of this has gone to Dalia Genger. Dalia Genger didn't get any fees from this. Dalia Genger's fees for her defense of this action, the companion action before your Honor, for her defense of the Surrogate's Court action, and indeed her affirmative fees for the action she brought against Aria to recover for the benefit of the trust, to recover damages for Aria's breach of contract to transfer full title. All those fees Dalia Genger have been billed to and paid for by Dalia Genger out of Dalia Genger's pocket. So there is no diversion of trust assets to Dalia Genger.

Now Dalia Genger is trustee, as a matter of law has authority to settle on behalf of the trust. The trust makes that even more explicit on page 26, I think, of the trust agreement. She settled. So the question that seemed to be teed up by the order to show cause was did these settlements or notes or anything violate either this Court's action, this Court's injunction --

THE COURT: Restraining order.

MR. MEISTER: Or this Court, in the other cases, restraining notice. Or the temporary injunction which I consented to in the Surrogate's Court. And, respectfully, it's spelled out in my papers. And as I read Mr.

Dellaportas' papers this morning, chapter and verse, nothing that has transpired has violated any of those three orders. So, respectfully, the application ought to be denied.

What it seems to me, your Honor, is that this is an attempt to avoid all the strictures in CPLR 6201 when a Court can order attachment. None of those fit and plaintiff's papers don't purport to rely on 6201 for the obvious reason they can't. So instead they come in here on an emergency basis, although there is no emergency, and seek to compel Dalia Genger, also Sagi Genger, to post four-and-a-half million dollars of their own money which is not only unprecedented but it's also not supported by law and seems contrary to the cases we cite in our opposition here.

Respectfully, your Honor, the motion should be denied. The one thing that I didn't say which I should is it's in my affidavit here, the trust has received no notification by Manhattan, the holder of the new note, of any demand for payment, no notification of any purported event of default to confirm because the mails are lousy of late, to confirm that it wasn't something that's off in the mail. I spoke with the President of Manhattan on Monday.

THE COURT: How is the weather in St. Kitts?

MR. MEISTER: It must be nicer than it is up here, your Honor. And he said that he has not made any demands

and has not noticed any purported notice of default. So there is no emergency here. In light of that, respectfully, the relief requested by the order to show cause is totally unwarranted.

And, indeed, if I may point out the language of the stay which, among other things, enjoins the trust from transferring any assets, would prevent the trust even from paying legal fees. So it's overly broad. In my papers, your Honor, I do state that Dalia Genger as trustees is prepared to give two business days' notice if the trust receives any attempt by Manhattan to either notice of purported default or attempt to collect upon that, we'll give that notice Orly's counsel. I say two business days, although the order to show cause is 24 hours because respectfully 24 hours could be impossible in the sense that--

THE COURT: In this day of email, you can send an email, you can send somebody notice instantly.

MR. MEISTER: Your Honor, first of all we're dealing with people who come from Israel.

THE COURT: It still comes instantly.

MR. MEISTER: They are not allowed to send emails. Secondly, I don't understand why two business days couldn't be --

THE COURT: Right assuming that there is a Chodesh

or a holiday, then, you know, it's going to be 24 hours, we can make it 25 because the prohibition is only going to be for a 24-hour period, sunset to sunset.

MR. MEISTER: Your Honor, I don't mean to make light of it, but my partner who is more orthodox and observant than I, however reformed Judaism, have a debate each year as to whether the office should be closed for one or two days for Rosh Hashana. He insists it's a two-day holiday, I say the way we celebrate it it's a one day holiday. I think it's certainly possible. I don't see the nickel and diming about the amount of notice when as a practical matter --

THE COURT: If all the Genger's were really so observant and so religious, this case wouldn't be here. Let's be truthful about that, you know, you're going to invoke that as a basis for extending the notice provision, all right, they would be in some, you know, they wouldn't have ever have been here with their divorce, so it's a bunch of nonsense.

MR. MEISTER: Your Honor, respectfully, I was referring to counsel.

THE COURT: That's a different issue. If it's an issue for counsel, that's a different issue. That is just not an issue for the Gengers. Let's call it the way it is.

MR. MEISTER: For a number of years

notwithstanding the allegations in the second amended complaint, the plaintiff relied on her mother. For a number of years she refused to take any telephone calls or otherwise communicate with her mother. So clearly any notice is going to be coming from counsel. It's going to be coming from my firm to counsel representing Orly.

I think as John W. Davis said, when you say what you have to say sit down and shut up.

THE COURT: You'll get a chance, Mr. Dellaportas. I want to here what Leah Fang who had the good sense to resign as trustee has to say.

MR. HOFFMAN: Mathew Hoffman, representing the defendant. I'm tempted to use the Yiddish expression which means it doesn't help anyway, but I wouldn't know how to spell it in Yiddish. So we resigned, your Honor, and all it did was result in a lawsuit against Leah Feng anyway. So your question as to why Dalia's didn't resign wouldn't help anyway, your Honor. Putting that aside Leah Feng is here to say she had nothing to do with any of this. And she didn't sign any of these agreements, as far as I know she didn't know about any of these agreements, there is no allegations against her, and there was no request for an injunction.

But with all due respect, your Honor, you enjoined her, because they asked for an injunction against the note defendants. And at one point, your Honor, you struck the

word "note", which if the note defendants was defined not to include --

THE COURT: If she's not doing anything, she doesn't need to do anything.

MR. HOFFMAN: That's correct, and she should, your Honor, we do not, with all due respect, enjoin people who are not going to do anything and haven't done anything. And she's a lawyer. I don't want an injunction out there against a lawyer who didn't do anything, who is not alleged to do anything.

Orly's firm has not even sought an injunction against her in the papers. She's not one of the defined defendants for purposes of the papers.

THE COURT: What the Court was trying to do was freeze the status quo, all right. And the Court's concern is that you know things have happened unbeknownst to the Court, unbeknownst to the plaintiff, that did not maintain the status quo. So I understand that. But that was the Court's motivation.

MR. HOFFMAN: I'm not objecting to the Court's motivation, I appreciate it. What I am saying is particularly when the plaintiffs have not sought it I'm asking that the Court not issue any relief against Leah Feng because she didn't do anything, doesn't intend to do anything, she resigned from doing anything in, you know,

we're talking well over four years ago, I think we're almost at five.

And, therefore, she wants out of this in every way. And particularly with the issues in front of the Court now, I see no reason whatsoever she should be governed by any ruling since nobody's alleged she's done anything wrong with respect to this, or that she intends to.

THE COURT: Mr. Dellaportas.

MR. DELLAPORTAS: Yes, your Honor. John Dellaportas for TPR. Your Honor, as I said we submitted I think a 20-page brief last night we appreciate your Honor hasn't had a chance to read it yet but I can boil it down in two or three minutes, it's very straightforward.

Essentially what we've been confronted with is Orly for years has come before the Court and said that there are these TRI shares that she says are worth a couple of hundred million dollars we're all conspiring to deprive them of her. So we tried to meet with her to settle, she didn't want to settle. So we figured what do we have to do. So we worked out this deal whereby we basically relinquish the shares to her. Maybe the trust will win the suit and they will be worth two hundred million dollars.

Let's assume the worst and the trust loses its suit. In that case the trust gets $10.3 million dollars of sales proceeds which are owing to TPR. He can walk away on

a minimum of $10.3 million dollars in order to resolve this matter. As we set forth through our papers we're entitled to do it.

Orly is not bringing her own claims. If she brought her own claims she could do whatever she wants and she could not settle and she can take everyone to a jury trial. She brought derivative claims on behalf of the trust and on behalf of DNK. The law as we set forth on our summary judgment motion which predated this preliminary injunction by several weeks, it's still working its way through, is that it's very clear when you have a derivative claim, if you're suing on behalf of someone else, that somebody else has the right to resolve it.

It's like if I had a hundred shares of General Electric and I start suing everyone General Electric does business with on behalf of general electric on the grounds that I don't like the way they are doing business, General Electric has a right to resolve it. They don't have to consult me, and I can't go cry to the courts that they didn't consult me. The courts would think I'm a lunatic if I tried that.

The same thing here. The trust and DNK have the right to resolve it without the derivative plaintiff. The law on that is perfectly clear. There is no dispute as to that fact. That's the resolution. But that's not why we're

here today. You have our summary judgment motion and the Court will get to it whenever the Court gets to it.

There is a far more serious allegation here and one that really troubles us because this was done on advice of counsel, and we've been accused of violating three orders. And frankly in 18 years I've never seen anything like this. But they changed the wording of your Honor's order.

So, your Honor, in June 28, 2010 said we're restrained from transferring, selling, pledging, or otherwise disposing of the shares. And your Honor defined the shares as the shares of DNK Limited Partnerships 48 percent ownership interest in the common stock of TPR.

My colleague said none of this makes any sense and I should draw a diagram. I apologize for this, your Honor. This is essentially what we're talking about. Here's TPR. DNK owns 48 percent of TPR, and that's restrained. No one can transfer these shares. Nobody has transferred these shares.

THE COURT: That's D & K, LP?

MR. DELLAPORTAS: Yes, there is a GP on top of this, I left it out of there.

THE COURT: See if your diagram matches mine.

MR. DELLAPORTAS: So if DNK itself has shareholders there, Orly trust and some others, so the

settlement agreement relates to these shares. It doesn't relate to the shares that are restrained. This is very carefully tailored to honor your Honor's orders. And there is no violation of the restraint.

Now they may not like the agreement and they have a remedy. They don't have a remedy against TPR because your Honor ruled she's not our shareholder. We don't care if she likes our settlement agreements or doesn't like our settlement agreements. We think it's a fantastic result for her because we gave up $10.3 million dollars and frankly got nothing other than a release, and this release so far seems pretty worthless. Our legal bills have tripled since we got our alleged release.

If she doesn't like it she can sue the trustee in Surrogate's Court, that's her remedy. And from TPR's perspective, we've entered into a settlement agreement with the trustee of the trust. We had a decision from Surrogate Roth saying she's the validly appointed trustee. We have the right to settle with her. She has the right under the law and trust agreement to settle these things. We have the right to settle our own claims.

The law is absolutely clear that we don't need to involve a derivative plaintiff, and so we didn't involve her. We produced, the first day of document production, we produced it to her and we promptly moved for summary

judgment on it, there has never been a secret about it at all. We moved for it and we moved for summary judgment, and we think it's an absolute defense, certainly they put in their opposition papers, and we haven't seen anything that's not the defense.

From our standpoint, number one we haven't violated your orders. Let me clarify, we violated the orders as they have been rewritten in Orly's briefs, but we haven't violated the orders as your Honor actually ordered them. I think that's really the material test here. And so we haven't violated any orders. What we've done is completely comporting with the law, and we should not be subject to any further restraints.

What the Court should do in our opinion, respectfully, is it should proceed to consider our summary judgment motion. Because the only consideration we really got out of this deal in exchange for giving them at least $10.3 million dollars, and maybe two hundred million if they win their suit, is we got a release. And the release really isn't any good if all we do is get sued more and more. That was our consideration. Walk away from this $10.3 million pool of cash that's waiting for us, but at least we get to disentangle ourselves.

And that's what this is really about. We really would like to find a way to disentangle ourselves from

litigations brought by people who, with all due respect, don't want to disentangle, don't want to settle, really want this to go on and on and on. This is a war of attrition here and we don't want a part of it. And the law doesn't say we have to be a part of it. Orly has some individuals claims, she has the right to bring those, she can take them all to a jury if she can plead a cause of action. But these aren't her claims, these are derivative claims.

The parties we settle with has a right to settle it. The settlement does not violate any of your Honor's orders, we lay that out in our opposition papers. And, therefore, from our standpoint, the Court should proceed to summary judgment and we should get this wrapped up.

And with that I'm here to answer any questions that your Honor has.

THE COURT: Before I turn to you as the movant, anybody else have anything in opposition?

MR. SASH: My name's Alan Sash, I represent defendant Sagi Genger. We don't want to go unheard, but we also didn't want to spend our clients money and time and everyone else by just repeating what TPR and Dalia Genger said, so we just join in their arguments, your Honor.

MR. LYONS: Desmond Lyons on behalf of D & K, GP. I echo Mr. Sash's statement with respect to D & K, GP. I think the arguments are pretty well set forth in TPR's

papers as well as Mr. Meister's papers.

THE COURT: All right. Does Trump counsel have anything to say?

MR. ARDEN: We do not, no.

THE COURT: You have to tell the Reporter who you are.

MR. ARDEN: I'm sorry, Tony Arden from Skadden Arps for the Trump Group. We have nothing to add.

THE COURT: Now are you in the New York office or are you in the Bloomington office that was one of the things we were wondering.

MR. ARDEN: I was in the New York office today, your Honor, but I'm normally in the Wilmington office.

THE COURT: Okay, so I'm glad to see that all three of you aren't here.

MR. ARDEN: The New York office has a better lunch I can tell you that.

THE COURT: I had an interesting experience in one of my capacities at the State Bar. I was in a meeting yesterday at Proskauer up on the 27th Floor, you can see all the way into New Jersey and here, there, and everywhere, but I didn't see any lawyers. I'm like where do you hide the lawyers? There is a beautiful conference room, beautiful reception areas, escorted here, escorted there. I don't think I saw a single law, I was on three different floors.

MR. ARDEN: They were all over at Skadden Arps, your Honor.

THE COURT: Any way, getting back to this, Mr. Griver, what say you.

MR. GRIVER: My name is Yoav Griver, I represent the plaintiffs in the action, Orly Genger individually, Orly Genger representing the Orly Trust, and Orly Genger representing D & K, LP.

At some future date, your Honor, we will talk at length about summary judgment and our motion for sanctions and even a motion for contempt that we are bringing for violation of the injunction. But right now Orly, the Orly trust and D & K, LP, stand before you seeking what they have always sought, which is preservation of the status quo until Orly, the trust, and D & K, LP, and their rights can be determined by this court. That's all that we've always sought, and I think it is humorous for the defendants to come up here after entering into eight agreements in the face of three injunctions and complain about Orly's machinations.

But I think, your Honor, for purses of today, it's really quite simple. Because the Court has already provided us with the relief that we seek, and the Court granted it to us on July 28, 2010. I'll explain to you what I mean.

THE COURT: If that's true, what are we doing

here? And that comes back to my original question when you came in with the order to show cause. Go ahead and move for contempt.

MR. GRIVER: Because, your Honor, because of what the defense have done, we are here for triage, we are here for prophylactic purposes to make sure that it is worth continuing to litigate this case. And that Orly and her trusts and D & K, LP's rights are protected until this case is determined, which is what the Court gave us on August 17, 2009.

In August of 2009, and this is from the very first paragraph of the memo of law asking for preliminary injunction. "The relief requested is narrow in scope. Plaintiff seeks an order preserving the status quo while she prosecutes the current action against the defendants."

And why did we run into Court and seek a preliminary injunction? Well, this is from paragraph 81 of our complaint. "If not restrained, Dalia and Sagi will inflict additional harm upon Orly by pledging the Orly trust TRI shares as security for the manufactured deficiency under the note declaring a further default against the Orly trust for nonpayment of the note and conduct conducting a further sham auction of the Orly trust TRI shares", Tom, River, Ivy, TRI.

THE COURT: When you're reading, you're looking

down. It's hard for her. We're familiar with this, she's not.

MR. GRIVER: Right. "Thereby completely divesting the Orly trust of its remaining principal asset." That's why they ran into Court, and this is what the Court did after briefing the argument. And by the way, many of the arguments that are made again today, you know, in some ways, your Honor, this is like litigating against rain man, many of these arguments are the same. That somehow the Surrogate Court blessed Dalia for life as the trustee, even though all of the acts complained of happened after the decision of the Surrogate Court. That these are somehow routine business transactions. That the only recourse is in accounting in Surrogate Court, which would be a surprise to the Surrogate Court who also imposed an injunction.

How dare Orly accuse us of fraud. We've already released each other, and there are certain releases entered into by the defendants together. All of this is moot. Your Honor rejected all of that and denied the summary judgment motions. But at the same time, your Honor --

THE COURT: I thought it was a pre answer motion to dismiss.

MR. GRIVER: It was, which your Honor converted to a summary judgment and invited --

THE COURT: I didn't remember that aspect of it,

it's been a couple of years.

MR. GRIVER: Right, it has been a couple of years. That was motion sequence number three, I believe. Motion two, three, et cetera. Motion sequence number one, which is the preliminary injunction, look at what the Court said in its order.

"As to motion sequence number one, due deliberation having been had, and it appearing to this Court that a cause of action exists in favor of the plaintiff and against the defendants, and that the plaintiff is entitled to a preliminary injunction on the ground that the subject of the action is unique. And that the defendants threatened to do an act in violation of the plaintiff's rights respecting the subject of the action tending to render the judgment ineffectual."

That's why the Court issued the injunction. That's why we came to the Court and sought an injunction. Now whether they violated the order I think is crystal clear. But that can be decided by the Court through sanctions or contempt. What we are talking about now is prophylactic. We were in the Court then because per our complaint there is no enforceable note, there is no valid UCC sale, and there is no deficiency. That's our complaint. All two hundred plus paragraphs of it, which this Court said raised issues.

So we came in then to prevent the defendants from acting as if there was no complaint and no issues of fact. And once again we're here seeking the same relief because they have changed the circumstances. And the reason why the Court granted an injunction, and that is to make sure that any judgment is not ineffectual, has been destroyed by them.

All of the agreements that they talk about are predicated on the fact that there are no issues of fact, that is this Court's opinion it says as to the complaint never existed. That's why we need the additional relief because this is what they do, okay, and your Honor I'm going to go through some select versions of the agreements and show you exactly what they are doing, then your Honor can decide if this is a fabulous unprecedentedly wonderful settlement agreement, or if this is actually something that insures that at the end of the day any decision by this Court means nothing, and that whatever else happens Orly gets nothing. And then you can decide why it is that Dalia is hanging on by her fingertips to being the trustee.

Our Exhibit H, your Honor, which is the May, 2012, amended note, okay. In May 12 of 2012, the Orly trust signed an agreement with this mysterious St. Kitts entity, Mr. Meister last week said he didn't know anything about it, now suddenly he has phone numbers and he knows all about them, or certainly knows a lot more than he professed

beforehand.

MR. MEISTER: I object, your Honor, because your Honor was here. I didn't say I didn't know anything about it.

MR. GRIVER: You said, "I don't know and if I did know I wouldn't tell you." That's in the transcript. But in any event, your Honor, please the let me continue. They signed an amended and restated promissory note for $4,240,000. And the principal is due on that $4 million plus dollars on November 1, 2012, which is two months from now and about six months from the date they signed it, or, and this is the earliest November 1, 2012, or the receipt of the TI proceeds which is then going to the first $4.4 million dollars or so will have to be paid, first things first notwithstanding anything to the contrary, to Manhattan.

Of course there can also be events of default such as Dalia moving, your Honor asked why can Dalia not remove herself as trustee. Well, maybe one reason is because it will now accelerate a note. In any event, your Honor, upon the occurrence of an event of default, the holder may declare the unpaid principal due and owed along with interest, and may proceed to enforce payment."

So at the latest by November 1, 2012, $4 million will be due. And, by the way, Mr. Meister said, well, we

haven't been given any notice. Well, in paragraph five of that note, the Orly trust waives any notice of any kind whatsoever at any time in these proceedings. More importantly, your Honor, the $4.240 and the other $200K note, on the note is part of a credit and forbearance agreement and second amendment and restatement of the promissory note.

And here, your Honor, is something interesting. Under the credit agreement, again the Manhattan safety, the St. Kitts entity which is outside of this Court's jurisdiction, can collect on all of the assets of the Orly trust at the earliest of the date that Dalia no longer so exists trustee of the trust. So Dalia's removal or her resignation accelerates a $4 million dollar note, $4.44 million dollar note.

The final resolution of the Pedowitz and Meister interpleader action, now Mr. Meister in his papers you will see says: Oh, well, the interpleader action isn't over yet. That may be his interpretation. I think the interpleader action is resolved, it is over Judge Keenan labeled it a sham and dismissed it. In any event, concerning the fact that in the amended promissory note, another thing that Dalia Genger did as trustee of the trust purportedly is to waive all defenses whatsoever.

It really doesn't matter what Dahlia or Mr.

Meister may think because it's entirely up to Manhattan Safety to determine if there has been a violation, or what the resolution of the interpleader action is because the Orly trust has no defenses.

And then finally it has agreed to forbear for additional amounts of money owed kicking up the principal of the notes until November 1, 2014. "Except notwithstanding the foregoing, Manhattan may take any action reasonably necessary to insure the payment of any amounts payable under the note and commencement of enforcement actions to collect amounts owing under the note or the new note upon the occurrence of", and this your Honor is the hole that you can drive the truck through, "any action by an individual or entity which Manhattan believes may adversely affect the trust's ability to fully perform all of its obligations under this agreement, the note, the Manhattan loan, or the new note."

So whatever Manhattan believes may somehow adversely affect the trust's ability to perform allows it to accelerate and allows it to try to collect with no notice whatsoever. That's why on a prophylactic basis, because if Manhattan does that to the trust, then what happens is all of the TRI shares all the proceeds can be collected, they will have a claim on it.

We will have other fights and other litigations

and we will have under the plain language of these agreements that they insist are above board, which I think is hallucinatory, they have no defenses. This is something that could happen now. It could happen now simply because Manhattan believes something, or because the interpleader action doesn't exist.

So we need, your Honor, protections that will allow this Court to do what it has already ruled Orly's entitled to which is a preliminary injunction that prevents the defendants from acting in a way that would tend to render the judgment ineffectual.

So, your Honor, given the situation that the defendants have placed themselves in, we have come up with, and your Honor's welcomed to amend this and add additional protections based on what it believes will help, but at this point, your Honor, we have the order to show cause. And what we're trying to do here, your Honor, is require them to let us know as soon as possible about any attempt to collect on these new notes and on this credit agreement. We want Manhattan Safety Company to be provided with copies of this order to show cause and any subsequent order, because these notes, by the way, are freely assignable which means we have problems with our arguments about who is a holder in due course. Arguments that we cannot raise because the trust has waived all defenses.

THE COURT: But the issue becomes how to get Manhattan Safety in here. Who has that responsibility, because they are not a party to this action obviously.

MR. GRIVER: Right, they are in St. Kitts. And your Honor can come to its own conclusions about why they chose an entity to borrow money from for the space of only six months before it's due that happens to be outside this Court's jurisdiction.

However, what we can do is have the money available. Maybe Mr. Meister will get up here and to my great shock and happiness will say: Oh, well, the Orly trust just happens to have $4.5 million sitting around, and I knew that when I and the trustees, in quotes, trustee Dalia Genger went ahead and agreed to owe $4.4 million dollars, $4 million dollars of which, your Honor, is based on the manufactured deficiency that doesn't really exist.

And at that point that's great. There is money available. Let's put that money into the Court so it's available. Let Manhattan Safety know that $4.4 million dollars is here ready for collection. And you know what if there is no attempt to collect, well that money will just sit there like the $10 million in proceeds is sitting in an escrow account.

And, your Honor, it has to come from Dalia and Sagi. Why? Because otherwise it will come from some entity

which Orly has a potential interest in. It will come from TPR. It will come from someplace else. The Orly trust will sign an agreement with the Trump Group, who the heck knows where it will come from. It needs to come from Sagi and Dalia Genger, the two individuals who control all of these entities, and the people who have been conspiring against Orly to do all of these things. And that's, your Honor, why we need the additional relief. It's simply additional relief.

THE COURT: Would you agree with Mr. Hoffman that the Court drew the TRO too broadly to the extent it included Leah Feng?

MR. GRIVER: Not the TRO, I believe that the preliminary injunction can release Ms. Fang, except perhaps for the notification provision. If Ms. Fang for some reason is a tertiary Sagi Genger family member gets to know this information, there is no reason why she should not be bound to provide that notice. But Mr. Hoffman is correct, Ms. Fang is no longer trustee. As far as I can tell the only thing she did as trustee is sign an agreement that affirmatively harmed Orly and the Orly trust, but thereafter she resigned. And we're not suing Leah because she resigned, we did not sue Dalia because she resigned, we're suing Leah and Dalia because of what they did while they controlled the trust.

I've responded to most of the arguments already, your Honor, but the idea that there is some wonderful money or reason or consideration to the Orly trust, the idea that all TPR did was magnanimously gave away $10 million. In return the Orly trust gave up it's D & K interest and its TPR interest. That means that D & K, LP, who is a plaintiff here, has no more claims. It means it has no more right to anything. What TPR did -- TPR itself has value. Mr. Dellaportas was here in a previous argument and said that TPR can't be restrained, and there can't be another, there would have to be someone put in charge of TPR other than Sagi, because on its day-to-day business it runs 30 odd properties around the world, it's worth million dollars, all of that went whoosh to TPR, and Orly lost TRI as well.

What this has done is it has completed exactly the scenario that was set forth in paragraph 81 of our complaint except we did not know about Manhattan Safety Company. We did not know that TPR, who we named in paragraph 81 would assign its rights over to whatever this company is, and then they would do the enforcement based on the manufactured deficiency. This, your Honor, is fraud. Mr. Dellaportas likes to say, well, it's not fraud, it's just carefully tailored, it's a carefully tailored response to try to work around your Honor's injunctions.

Well, one, I think they failed. I don't think

that's carefully tailored. I don't think it's clever. I think it's transparent. But beyond that, your Honor, we cite cases in our briefs that say that you're not supposed to try to figure out how to work around, you're supposed to honor both the letter and the spirit and not try to circumvent the injunctions. And that is what Mr. Dellaportas, and that is what these defendants have admitted to doing. They looked at your Honor's words and they tried to do their best to figure out a way to accomplish what this Court was trying to avoid which is rendering this judgment ineffectual any way that they can. Your Honor, it is fraud. The fact that Dalia again is trustee doesn't matter. The paragraph Mr. Dellaportas cites says except for fraud. The cases that we cite say except for fraud. Except for instances where you have some kind of crippling conflict of interest which is exactly what this situation is.

The defendants released themselves, dissipated all of the trust, and have completed the scheme that we came in here three years ago to try and prevent. Your Honor has to increase the injunction to make sure that the $4.44 million dollars is available to pay Manhattan Safety during the pendency of this action so that Orly and D & K, LP, and the Orly trust can have its rights vindicated.

The idea that this Court does not need to have any oversight over this the fact the Court does not have to

insure there is no fraud or self dealing is ludicrous based on common sense, and based on the cases that we have cited to you. Mr. Dellaportas says: Hey, wait a second, this is the Orly trust is a Delaware trust, it's not a New York trust. Well, respectfully, your Honor, as a matter of procedure I think that he is wrong. I still think you'll find the New York partnerships law that even so Mr. Dellaportas should look at Chancery Court Rule 23.1 in the case of Orr v. Ross. In the Chancery Court 2008 Westlaw 7957723 in the Delaware Chancery Court that says that, and I'm sure your Honor it's this way for every state. In a situation like this one, the Court has to exercise its oversight statutory and before that under common-law to make sure that everything is on the up and up.

And for them to come in and say: Hey, you know what, guess what, we did this a year ago. And, hey, guess what, we also did some stuff in May, and we did some stuff in March. All of that stuff is not only is it okay but it gives you a mechanism to get rid of this case and grant summary judgment just on the plain language of these agreements is contrary to law, contrary to common sense, contrary to this Court's preliminary injunction. I'd love to hear the responses, I think it's always at least educational.

THE COURT: I think your colleague wants to add

something so they can respond all at once.

MR. WACHTEL: My name is William Wachtel. On September 13 last year we appeared before your Honor, and I said to your Honor, quote, "I truly hope that whoever thinks they are acting on behalf of TPR truly understands that TPR isn't an entity owned solely for the benefit of Sagi Genger." And your Honor said, "I agree with you on that, there is no doubt about that."

For reasons that remain a mystery to this moment, I don't know why these gentlemen, lawyers, secretly engaged in a settlement creating an obligation against the Orly trust and then selling that obligation to St. Kitts. It is more than a fraud on this Court.

Your Honor may remember that the D & K note, which started all of this, is that famous note that even Sagi Genger said it was never intended to be enforced. In 2005 Sagi Genger decided to at least tell the Internal Revenue Service that it was worthless. Took a $9 million loss on the tax return. So by 2005 this note, if it was ever enforceable, was worthless. What they have now done is taken a worthless obligation, used it to foreclose Orly out of her interest in TPR, because they credit bid this worthless note.

This is what they walked into that conference room and said: Okay, we'll credit bid $2.2 million dollars of a

worthless obligation to take Orly's interest of TPR and extinguish it. Now this worthless note has somehow been sold to St. Kitts. But realizing that you can't expect a worthless note to be transferred, they created a new obligation. Because the D & K trust and the Orly trust, despite what Mr. Meister says about bad math, owes nothing because the note was never intended to be enforced, is worthless. So they have created a new $4 million dollar obligation, saddled the Orly trust with it, and they have assigned it or sold it.

THE COURT: See that's the part that I still never get past is this notion of a worthiness note that everybody is going to have a secret agreement not to enforce because, you know, we want to be able to satisfy the IRS. That's the part that just sticks in my cross at the beginning of this case. But, okay.

MR. WACHTEL: You couldn't be more correct. And interestingly enough at least in 2005 when they filed amended tax returns they finally say to the Internal Revenue Service it's worthless, it can't be collected. In order to take that position they have to say it can't be collected.

They have now used that worthless note to foreclose out Orly, and they have now sold in essence that worthless note to a St. Kitts organization for a value that they have not disclosed. And I truly hope the Trumps have

nothing to do with that St. Kitts entity.

And then ultimately now they are asking this Court to say to your Honor: No, we don't need a neutralizing force. The words you used, your Honor, I don't think could be more apt. There is nobody watching out over TPR. Dalia Genger can't do it, Sagi Genger can't to it, none of the Gengers can do it. And your Honor thought that a new trustee for the Orly trust is certainly an approach. As Mr. Griver points it out, that's now become its mouse trap. You will be receiving from us next week under seal --

THE COURT: I won't receive anything from you next week because I won't be in the city.

MR. WACHTEL: But you will understand more fully when we make our submission.

THE COURT: Upon my return perhaps.

MR. WACHTEL: The neutralizing force that's needed is a receiver, someone who can faithfully help the Court understand what happened, faithfully respond to subpoenas, faithfully answer questions. And when that neutralizing force is in place, maybe then this case could move itself along. And you never know, it could still resolve itself. And we hope that the Court will at least maintain the status quo long enough so that Orly will have that ultimate day in Court.

MR. GRIVER: Your Honor, that's really why we're

here so that any judgment will not be --

THE COURT: We're repeating ourselves. All right, Mr. Meister.

MR. MEISTER: Thank you, your Honor. I'd like to respond to a couple of points that counsel for Orly had made. First there was a reference to the whole point of this was to pledge TRI's shares. The problem with that argument when your Honor studies through the papers, there is no pledge of the TRI shares. None of these agreements pledged or encumbered or did anything with TRI's shares. Nor with the trust's entitlement vis-a-vis the TRI shares.

The only thing that these papers did vis-a-vis the TRI shares was to obtain for the Orly trust whatever entitlement TPR may have claimed to those shares. Now that's important because the first of the orders that they claimed we violated is the Surrogate's Court order. I don't know why they are in this Court complaining about the Surrogate's Court order, but that was an order which required the trustee to give notice of any offer to purchase the TRI shares, or any pledge, encumbrance, assignment, or other ways affecting the interest in TRI. And clearly when your Honor reads the papers, you'll see that had nothing, they had nothing to do with that injunction. The TRI shares are unaffected by this.

Second is the injunction which your Honor entered

on one of the initial motions, and since Mr. Griver goes back to day one, I would remind the Court that your Honor granted part of our motion to dismiss, the part that was duplicative of the Surrogate's Court proceeding they had brought, not the original one, but the new one when they decided to judge shop, because Judge Surrogate Roth had retired and they might get a different bite at the apple with a new judge. And your Honor properly deferred that to the Surrogate's Court. So all this issue about whether Dalia is acting properly as trustee, et cetera, is before the Surrogate's Court, it's not before this Court.

In candor I have to say I've made three motions to dismiss those proceedings in Surrogate Court on various legal points. It's three because every time I make the motion they amend, that motion is now pending. And I've been informed by the Surrogate's Court, as has Orly Ganger's other counsel that it's about to decide that.

The second point is the injunction which your Honor issued in June 2010, which as Mr. Dellaportas points out, refers to removing the D & K partnership's interest in the stock of TPR. It's the TPR stock in the settlement papers, and the notes have nothing to do with the TPR stock.

And the third injunction is the injunction which your Honor issued in another case. Again, I don't know why there is a motion in this case about an injunction to the

other case, which enjoined TPR and the Trump Group to give ten days of business, ten business days' notice for future transactions that may impact the subject TRI shares. Again the settlement doesn't have anything to do with that.

A couple of other points briefly, there is a reference Mr. Wachtel suddenly brings this up to somehow this note is worthless. The trust does not agree the note was worthless. If the note was worthless, why was there a pledge agreement entered into in 1993 pledging shares in support of the note? If the note is worthless, why were millions of dollars of payments made up through 1999 to reduce the principal and pay the interest of the notes?

I don't know what tax position TPR took, nor do I much care. I know Mr. Wachtel is an expert on tax law, but it doesn't really relate to this note which couldn't have been worthless because if it was worthless then Harry Genger would have engaged in tax fraud. He would have given away stuff without paying gift tax on it. And even Orly has never contended or committed gift tax fraud. Nor has Orly ever contended that the note didn't, for instance, the D & K note didn't obligate it, that is the trust, to pay its guaranteed portion. The dispute until now has been whether that could be enforced against the trust if the trust doesn't pay it. We disagree on that.

But there has never been any question that the

note is a note, the guarantee is a guarantee, and the pledge is a pledge. And all of that flies in the face of counsel suddenly stating that the note was worthless and was never intended to be paid. Millions of dollars were paid on that note.

A couple of other points I should make, it's in my papers, but the Court should be aware that the settlement agreement does not purport to contain any release of Dalia Genger which remains. Dalia Genger has not moved for summary judgment. If Orly Genger wants to continue to litigate against Dalia claiming there is this alleged fraud and claiming that she relied on Dalia Genger, when for years she wasn't speaking to Dalia Genger, and when for years she had been suing Dalia Genger, would we would have to continue to litigate that.

And finally, your Honor, this reference to St. Kitts. It's funny because I had another case before Supreme Court which was governed by the law of Curacao.

THE COURT: They make the funny blue stuff.

MR. MEISTER: Apparently it's a very beautiful item. The justice who did the trial said do we all have to go down there? Unfortunately we do not. St. Kitts happens to be the domicile of where Manhattan is organized. There is no consent to St. Kitts' jurisdiction in any of these papers. So if there were any attempt to enforce the note,

Manhattan would have to come to where the trust is. These papers were negotiated here in New York. They would have to come here. The papers provide that the governing law is New York law. So I don't think all the smoke and mirror about St. Kitts makes any difference.

And while we're talking about this hypothetical enforcement of which they purport to be concerned, although there is no ripple of it on the horizon, how does one enforce a note? Well, first of all notes always say there is no defense, the standard note language. But one enforces a note by suing the maker of the note. So presumably they can sue the maker here. That doesn't give them a right to grab TRI shares. In fact, at the moment it is the contention as to what interest, if any, the trust has in the TRI's shares.

We contend the trust has an interest in the other action, Orly is contending that the trust shouldn't have an interest to the action, the interest should go to Harry A. Genger, nor would it have the right to grant the $10.3 million dollars which are in my firm's escrow account because that's governed by an escrow agreement which doesn't give anyone any rights until a Court of competent jurisdiction determines who was entitled to what interest on the TRI shares.

So like so many other note holders, they'd be

sitting, suing, conceivably getting a judgment. But at the moment there are no assets to grab. So this fix that somehow some $4 million dollars is going to be grabbed and sucked away to St. Kitts leaving Dalia, leaving the trust with nothing is nothing more than a fiction. Even if the trust winds up with only the 10.3 million dollars, it wouldn't be nothing after the note was paid there would still be six million bucks left over. Which maybe is nothing to Orly's counsel, but it's a very substantial sum of money.

In short, your Honor, these transactions that don't violate any of the three Court orders, your Honor's, the Surrogate's Court, or your Honor's in the other case, and there is nothing improper when all of this, and all this smoke and mirrors and claims of tax fraud and receivership and that sort of stuff, is nothing more than that, smoke and mirrors.

THE COURT: Mr. Dellaportas.

MR. DELLAPORTAS: Your Honor, I'll be very brief because I see your Honor is writing out the order, and I think my powers are persuasion are diminishing as the space on the order is shrinking. So a couple of points very briefly, your Honor.

THE COURT: Mr. Hoffman actually won, that's why I didn't go back to him.

MR. HOFFMAN: Thank you, your Honor.

MR. DELLAPORTAS: Number one, I just want to point out we were brought here under one pretense that we violated orders, I heard 15 minutes from Mr. Griver, another ten minutes from Mr. Wachtel. Mr. Griver quoted his own preliminary injunction brief. Mr. Wachtel quoted his own wise words he gave in oral argument. I don't think your Honor ordered their submission.

I thought we were here today on orders. We didn't hear any language from the orders. The only language quoted from the orders in their brief is quoted with interest which changed the meaning of the brief, very creative use of bracketing. So to the extent we're here today on one pretense, another pretense has been argued and that's that it's a bad deal for the trust, Mr. Meister expressed that.

More specifically to the extent there is going to be a continuation, we would ask very strongly, your Honor, that there has to be a bond. They do request a bond. They request a bond on the enjoined parties. That would be, from what we could tell, that would be the first instance in the history of New York jurisprudence where the party being enjoined had to post a bond.

The correct, under the New York statute CPLR, what's correct is that the party seeking the Court's relief posts the bond. It's discretionary under the TPR, it's

mandatory under the TRI.

THE COURT: It's mandatory for a preliminary injunction, discretionary on a TRO.

MR. DELLAPORTAS: I'm obviously not saying anything the Court does not realize, but here it's very significant because what we gave up are our rights to collect on this $10.3 million dollars. What we got is this release which apparently is now going to have a third motion. They made a cross motion for sanctions to try to get released out of this case, then a motion for violating orders, apparently now it's something different. And apparently there is going to be a third motion for contempt next week for Mr. Griver, and the fourth motion for receivership filing or something, I don't know what nonsense.

So we've got apparently four motions out of this. We're being deprived of the benefit of our bargain. And what we paid was $10.3 million dollars, which if you add up all the things that they say we got out of this and you take them at their word that the note was worthless, this and that, it's worth a lot less than $10.3, the bond has to be $10.3. They need to post that. That's what we're jeopardizing by losing our release, that's what we gave up, that was our consideration. If we can't get that, then we've got all bargain and no benefit, or all whatever.

So, your Honor, we think it's very important that a bond be posted here. We've seen a series of motions made on unsworn attorney statements. We hear another attorney making statements about alleged confidential proceedings which would be a violation of the law. We had all sorts of irregularities going on here. We don't have any kind of evidentiary burden. The only evidence put forward is your Honor's prior orders which were misquoted.

So from our standpoint it's very important that if there be any injunctive relief, it absolutely has to be a bond, and the bond has to be for $10.3 million dollars. That's what TPR is giving up. Mr. Wachtel says who is looking out for TPR. Well, it's not them. They are looking to destroy TPR because they associate it with Sagi. I'm looking out for TPR, your Honor, and I'm looking out for TPR, and TPR shareholders, none of whom is Orly.

TPR is being destroyed by this litigation. And we got something out of this, and that was a release. And to the extent it's going to be held up and we're going to have four or five or six motions challenging this with duplicative pleadings, we need a bond. And the consideration was $10.3 million dollars. That's our injury if this all turns out to be a lot of hooey which we believe it is. So we would ask the bond be posted in that amount. Thank you, your Honor.

MR. GRIVER: Your Honor, five quick points. One, your Honor may notice the only person actually quoting the agreements that they entered into is myself.

THE COURT: I'm really most interested in just responding to his request for the bond.

MR. GRIVER: I'll get there, your Honor. They keep--

THE COURT: Sooner rather than later.

MR. GRIVER: They keep mentioning an injunction, that's the injunction where they were ordered not to use, spend or make demands upon the proceeds, which was the consideration for all of the agreements. But, your Honor, as to the release, as I said before, this is a continuation of the Judge's granted July 28, 2010 injunction. At that point you ordered the posting of $150,000 as an undertaking. That is still there. Your Honor has already ordered the posting of an undertaking.

The fact that they have acted so as to require additional relief should not require plaintiff to go ahead and put up more money, which is exactly what they are asking for. And the basis for Mr. Dellaportas saying we gave up the right to $10 million dollars so she should post a $10 million dollar bond. If we're right about this, your Honor, he gets back $10 million dollars. He doesn't lose anything. The only thing he loses is a release that this Court will

determine is fraudulent. That's what he'll lose through this injunction. The rest of it is purely prophylactic because of things that they did. So the Court should not increase the undertaking it's already entered into.

Your Honor, Mr. Meister's completely wrong about jurisdiction, about assets, and about the release. Manhattan Safety is entitled to enforce its rights against all of its assets, all of its assets can be collected at any jurisdiction, including Delaware. And it's not just the trust itself, but its assets are subject to jurisdiction anywhere in the world.

And finally the release which Mr. Meister says does not cover Dalia individually, read paragraph three on page five of the amended release. "The parties to the settlement release one another including all current and former trustees in their fiduciary or individual capacities." So Dalia is released. Dalia is intentionally released. I don't know what Mr. Meister is talking about there.

And finally, your Honor, before Judge Malones, Dalia and Sagi took the position that the note was uncollectible. Judge Malones ruled in Dalia's favor. It's paragraph 51 in exhibit eight of our complaint. So when Mr. Meister says how can they possibly say it's uncollectible, well, my answer is because your client testified to that,

your client put in papers to that fact. And Sagi and David Parness also testified to that fact. And you got a Judge to say: I agree with you. It's uncollectible. So on that basis at least it's uncollectible. And then you can throw in the rest of the stuff about taxes, et cetera.

Your Honor, we have taken your time. I understand you are going on vacation. I appreciate it. But please realize that you have to protect Orly during the pendency of this action. What they have done is created a mechanism to insure that any decision by you is worth exactly the paper it's printed on.

THE COURT: All right. The motion's adjourned to 9/5 at 2:15 for the filing of your reply papers. I'm assuming you wanted reply papers?

SPEAKER: We would like some, your Honor.

THE COURT: So you have until 9/5 to get those in. No sur-replies.

MR. MEISTER: Is that a date for submission?

THE COURT: Let me read the order. "The motion is adjourned to 9/5/2012 at 2:15 for the filing of reply papers, no sur-reply." That's underscored in the original. "No appearance is required on 9/5/2012." That's the next sentence. That answers your point. "The TRO signed 8/9/2012 is continued pending further order of this Court, except it is modified to restrain only the "note defendants"

as originally defined by the movants. Counsel for Dalia Genger shall serve a copy of the order to show cause and this order upon counsel for Manhattan Safety Company Limited."

MR. MEISTER: Can you read that again?

THE COURT: "Shall serve a copy of the order to show cause upon counsel for Manhattan Safety Limited." I haven't restrained them or anything. At least this way they can't say they didn't know what was going on, so get it to their counsel.

MR. MEISTER: Can we get it to them?

THE COURT: Or the entity itself, sure. I thought you said earlier on the record you knew you had spoken to counsel.

MR. MEISTER: I had spoken to the President, your Honor, at the time of the transaction.

THE COURT: Or an officer of such said entity. Okay, that's fine.

"It is further ordered that the notice provision is continued and may be made via email or written letter, all right. And I need you to file the transcript from 8/8 and 8/15, all right.

SPEAKER: We received it today.

* * *

CERTIFIED TO BE A TRUE AND CORRECT
TRANSCRIPT OF THE FOREGOING PROCEEDINGS.
ANGELA TOLAS, OFFICIAL COURT REPORTER

AT

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

TPR INVESTMENT ASSOCIATES, INC.,

Plaintiff,

v. 13-cv-8243 (JFK)

PEDOWITZ & MEISTER LLP,
as escrow agent,
et al.,

Defendants.

----------x

New York, N.Y.
April 29, 2014
3:00 p.m.

Before:

HON. JOHN F. KEENAN

District Judge

APPEARANCES

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BY: ROBERT A. MEISTER, ESQ.

JUDITH BACHMAN, ESQ.
Attorney for Defendant Dalia Genger

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(In open court)
THE COURT: Good afternoon.
Before we get to the argument on the three motions, I wanted to find out something. Mr. Meister?
MR. MEISTER: Yes, your Honor.
THE COURT: How are you? All right. Now, you represent your firm as Pedowitz & Meister, right?
MR. MEISTER: Yes, your Honor.

THE COURT: Do you any longer represent the Orly Trust?
MR. MEISTER: Not in this action. I do in other actions.
THE COURT: OK. Because I was concerned about the possibility of a conflict.
MR. MEISTER: We did get waiver letters at the very outset, your Honor.
THE COURT: All right. You did. But in this action, Ms. Bachman, you're representing --
MS. BACHMAN: Ms. Genger, Dalia Genger, correct, as a trustee of the Orly Trust.
THE COURT: You're representing Dalia Genger as trustee of the Orly Trust?
MS. BACHMAN: That's correct, your Honor.
THE COURT: All right. Fine. I just wanted to make sure I understood you.

But you filed the briefs in this, Mr. Meister.
MR. MEISTER: I did, your Honor.
THE COURT: You did. All right. I just wanted to make sure I knew who was where.
All right. So first we're going to have argument on behalf of the motion that is being made to dismiss the action. And that's by Orly. And, Mr. Leinbach, you're going to argue that, or Mr. Griver?
MR. GRIVER: Mr. Griver, your Honor.
THE COURT: All right. I'll hear you.
MR. GRIVER: Thank you, your Honor. And I'll be seeking today to dismiss the action of TPR as well as the crossclaims and interpleader action filed by Dalia Genger and by Pedowitz & Meister as escrow agent.
Your Honor, on June 14th, 2012, you told the parties before you in no uncertain terms that this Court would not allow itself to be strongarmed into haling Orly into federal court. You reiterated that message on November 12, 2013, where you stated, "It is inaccurate for TPR to suggest that the issue of beneficial ownership is conclusively resolved." Yet, only six days later, on November 18th, TPR came in and brought an action, followed by the actions and claims of the other respondents.
So we are here again despite your instruction. And we are here on the flimsiest of grounds. There is a specific

September 1 escrow agreement that expressly sets forth five and only five enumerated rights in which proceeds -- and that's --
THE COURT: How do you fit this under subdivision 2 of that escrow agreement? I don't see how you fit under that.
MR. GRIVER: Section 2 of the escrow agreement, your Honor, there is no way that TPR fits within section 2 of that escrow agreement. I absolutely agree with you.
THE COURT: All right.
MR. GRIVER: And that's a whole point. They come to this Court and they ask you to direct the escrow agent to disburse the escrow funds to it, $10.6 million. But section 2 says, "No funds shall be disposed from escrow, from the escrow account except in accordance with section 2." And there is no

question that TPR --
THE COURT: Their argument is section 2, and you say it doesn't apply.
MR. GRIVER: It does not apply. But that's not really the argument, your Honor, because in their opposition brief, they say, well, we kind of almost sort of applied. But "kind of almost sort of" is not what you look for in escrow agreements. You have to scrupulously adhere to the specific terms. This was a negotiated agreement. Every one counts, and section 2 has to be met, and they don't do it.
So instead they say to you this: TPR asks you not to enforce the escrow agreement but to help them breach it. They

ask you to ignore it. Respectfully, your Honor, this is not what courts do. Courts do not amend or ignore agreements. They enforce them.
TPR's argument is that there are final judicial findings which conclusively established TPR's entitlement to those funds. TPR is gone. One of those findings that they claim exists is something that you said. "TPR takes one statement out of this Court's 52-page opinion."
THE COURT: That's what all of you do.
MR. GRIVER: Excuse me?
THE COURT: I say, that's what all of you do in this litigation, not just TPR. Everybody does it in this litigation. I read the minutes. What was it? 75 pages or 77 pages from the Delaware Chancery Court by the Judge who now, as I understand it, is the Chief Judge of Delaware. And he points out that everybody picks words here.
Let me ask you a couple of questions. All right. The state action claim, you're asserting an unjust enrichment claim against TPR arising from a sale of the Orly Trust shares to the Trump Group. Am I right so far?
MR. GRIVER: That's correct.
THE COURT: All right. Is that claim still viable, or did Justice Jaffe dismiss it?
MR. GRIVER: No, Justice Jaffe did not dismiss it. It is viable.

THE COURT: Now. As I understand it, you have an interlocutory appeal of certain rulings by the New York Supreme Court. There are two New York cases, right?
MR. GRIVER: The two New York cases involving the trust.
THE COURT: OK. One is on its way to the Court of Appeals, I'm told?
MR. GRIVER: No. There is a motion seeking a leave to appeal the unanimous decision of the Fourth Department.
THE COURT: In other words, you would like to get to the Court of Appeal.
MR. GRIVER: TPR would like to get to the Court of Appeal, Dalia Genger --
THE COURT: It's not a done deal yet.
Now, the second thing that's in the state court, as I understand it, that's your interlocutory appeal. Right?
MR. GRIVER: That's correct.
THE COURT: All right. Now, is that still extant?

MR. GRIVER: It is still extant. We are going to be arguing that shortly, your Honor, in about a month.

THE COURT: Should I defer ruling on the motions here until after the First Department rules? Did the First Department case ever have anything to do with this situation here?

MR. GRIVER: What Justice Jaffe did was, she dismissed

some of our claims, but not others, including unjust enrichment claims against Sagi Genger and TPR. TPR has cross-moved to dismiss everything. So we have that the Court, in the alternative, stay, and that is certainly something that the Court can do, and that is to stay matters until the end of the appeal process.

THE COURT: OK. Why does it matter whether I direct the escrow agent, in other words, Pedowitz & Meister, to release the 10.3 million to TPR? Even if I do that, don't you still have your claims for money damages?

MR. GRIVER: We do have our claims for money damages, your Honor, but --

THE COURT: Well, what difference does it make?

MR. GRIVER: Well, for one thing it would be violating the escrow agreement. For another thing, there's no basis for the Court to take that action. There has been no finding that would permit the Court to do that. TPR has moved for summary judgment, but there are issues of fact as to whether TPR has the right to those moneys.

I'll give you one example. TPR is in the First Department right now seeking leave to appeal to argue that they have absolutely no right to those proceeds because they entered into a settlement agreement in 2011 that gave all those proceeds to the Orly Trust.

I'll give you another example. We have a special

proceeding before Justice Jaffe right now where we claim that, under the escrow agreement, because of the failure to timely object under the specific express terms of the escrow agreement, the escrow agent shall disburse those moneys to Orly.

THE COURT: You've been litigating in New York State Supreme for years, right?

MR. GRIVER: Correct.

THE COURT: Does the escrow agreement even mention New York Supreme?

MR. MEISTER: It does not, your Honor.

THE COURT: I know it doesn't. That's why I asked the question.

MR. GRIVER: Right. It does not, your Honor.

THE COURT: Yes. But you're saying to me that I can't rewrite the escrow agreement, that I should read it strictly. And it's your position that -- is it your position that New York doesn't have the power to litigate the dispute over the money?

MR. GRIVER: No, your Honor. This is not the first time that we've been in front of you saying that the New York State Court should be the one to decide it. There is no question that it is a court of competent jurisdiction. The

interpleader before your Honor, which was another attempt by Pedowitz & Meister to give this Court jurisdiction, if you look

at section 2.C.3 of the escrow agreement, it says that the only thing that the escrow agent can do is to interplead the funds in a court of competent jurisdiction in order to, quote, obtain an order from such court requiring the other parties hereto to commence an arbitration proceeding pursuant to the purchase agreement to resolve all issues arising pursuant to this escrow agreement, period, end quote.

Pedowitz & Meister cannot come in here and interplead and ask you to decide who gets the proceeds. That's not what the interpleader is for. That's the specific language of this agreement. Nor can they come in and ask you to release them as escrow agents. They can, under 2.C.2, resign. But the relief that they seek is outside the specific language of the escrow agreement. They simply can't do that under the escrow agreement.

And, your Honor, I helped negotiated this escrow agreement. This was a hard-fought document. And for them to just say, well, now that we don't like the terms of that agreement, why don't you, your Honor, ignore them, that's unacceptable. That's not correct. That's not what this Court should do.

And look, your Honor, they talk about your opinion as giving TPR the right to the proceeds. Now, certainly your Honor didn't think so when it issued its decision on November 12th, 2013, when you said that the issue of who beneficially

owns the Orly Trust shares has not been decided. But look what you said about the escrow agreement, in the opinion that they cite as you having determined that they have the right to the proceeds. On page 24, you note the fact that in the state court the plaintiffs have, quote, privately contracted with the potential plaintiffs in the form of an escrow agreement which specifies the circumstances under which and to whom the escrow funds are to be released. And then you go on to say, "Once a court enters judgment on this issue, the escrow agent can disburse the escrow funds to the prevailing plaintiffs in accordance with guidance set forth in the escrow agreement."

So this opinion, the Delaware stipulation, none of that gives TPR or Dalia or the escrow agent the authority to ignore the escrow agreement, which is exactly what they do.

So TPR argues that dicta in your opinion somehow was a determination of beneficial ownership. That's simply not true. If you look at page 50 to 51 of your decision, you say exactly what your finding is. And that is that the claims, the Pedowitz interpleader is dismissed for lack of subject matter jurisdiction or pursuant to the Court's discretion to abstain. And then you say, the pending action is stayed pending resolution of the beneficial ownership of the Arie shares and Orly Trust shares in the state courts. Your Honor, the state courts have not decided that. If you look at the Delaware stipulation, which is their attempt to say that that happened,

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you'll see that that's not true at all. First of all, the stipulation proposed an order of dismissal involved a case that did not involve Orly Genger, and she was not a party to this stipulation. Second of all, if you look at paragraph 5 of that stipulation -- and that's Exhibit B to the TPR complaint -- TPR claims that this Delaware stipulation conclusively establishes TPR's rights to the proceeds. But look what Section 5 says. "The claims brought by TPR for the sale of proceeds against the trustee of the Orly Trust and the Trump Group have already been dismissed without prejudice." As a matter of simple logic, your Honor, this stipulation cannot determine TPR's rights to the proceeds, when TPR's claims were previously dismissed.

We go on to say how paragraph 1 only talks about findings that were actually canceled as to the Orly shares by the Delaware Supreme Court. Paragraph 2 does not answer the question who has the right to the proceeds or who was the appropriate seller of those TRI shares. There's no question now, because of the settlement between Orly as beneficiary and the Trump Group, that the fact that they had the right to buy, we no longer have any claims as to that. But we certainly are claiming that TPR had no right to sell. That's what our unjust enrichment claims are, your Honor. That's why we have a 2010 action that has been there for four years.

Unless the Court has --

THE COURT: You reserve how much time for rebuttal?

MR. GRIVER: Five minutes.

THE COURT: All right. Thank you.

MR. GRIVER: Thank you.

THE COURT: All right. So next, we'll hear from, Mr. Dellaportas is going to argue, right?

DELLAPORTAS: Thank, your Honor.

THE COURT: Would you use the lectern. That way the people behind you can hear you. Thank you.

DELLAPORTAS: Hopefully I'll be able to balance all this.

THE COURT: Put it on the rail there.

DELLAPORTAS: Thank you, your Honor.

And this is essentially my opposition to the motion to dismiss, and also my -- in support of the cross-motion for summary judgment.

THE COURT: Maybe I ought to take something up with you right at the beginning before you get into your argument. Not as long as you people but for some while I've had something to do with this, and as I understood it, back when some of these other cases were filed, TPR admitted that its principal place of business was in New York City. Now, nobody has raised this, not anybody before me here has raised it. But jurisdiction is always something that's before me.

Now, as I read part of the 08 Civil 7140, that the address for notice to TPR is care of Sagi Genger at 1211 Park

Avenue. Also, in the decision at 910 F.Supp.2d 657 -- I got this from the papers, I didn't make it up -- Sagi Genger is a joint United States and Israeli resident residing at 1211 Park Avenue.

Now, at this point, you're saying that the reason that I have jurisdiction is because there is diversity and that TPR's principal place of business is in Connecticut, right?

DELLAPORTAS: Yes, your Honor. And I can explain.

THE COURT: What?

DELLAPORTAS: I can explain, if you'd like.

THE COURT: All right. Because we did a little checking ourselves, and as I understand it -- and if I'm wrong you correct me, and I'll certainly give you an opportunity to say anything you want here -- as I understand it, Mr. Sagi Genger put his house up, or the house, on Juniper Hill Road up in Connecticut, in Greenwich, he put it up for sale. Where is he living?

DELLAPORTAS: Connecticut, your Honor.

THE COURT: What?

DELLAPORTAS: Connecticut, your Honor.

THE COURT: Is he still at Juniper Hill, or is he somewhere else?

DELLAPORTAS: I believe he's still at Juniper Hill. This was never a home owner. That was a rental. Essentially TPR has always been a Delaware corporation.

THE COURT: I know that. The question I'm asking you about is the principal place of business.

DELLAPORTAS: Until last summer his principal place of business was 1211 Park Avenue, in New York. Now TPR, the president is Mr. Genger and he maintains a home office, which is the principal place of business. Last summer, Mr. Genger, who has five children, two of his children have special needs. And so they found a special school in Connecticut. And so the entire family moved there. Over the last summer they moved their house there and they moved the home office there. And all the correct filings were made with the state of Connecticut to make sure that's right. Now, we're still registered to do business in New York. But the principal place of business is now Connecticut. And before filing this we researched it, and the case law says that you look to diversity questions and citizenship at the time of the onset of the complaint.

THE COURT: OK. Go ahead. That's fine.

DELLAPORTAS: And the move has nothing to do with this complaint or anything else. It had to do with the special needs. We're happy to put in an affidavit to that effect.

As far as Mr. Genger being -- you asked something about him being a joint U.S.-Israeli citizen?

THE COURT: Yes -- joint New York or U.S. and Israeli citizenship is not what concerns me. It's the question of the place of business.

DELLAPORTAS: So we're satisfied that we have proper diversity jurisdiction and we're properly before this Court, your Honor.

If I can proceed to the substance.

THE COURT: Go ahead.

DELLAPORTAS: So essentially, your Honor, we're here to enforce and implement the June 14th, 2012 order on its terms. And I've read that it's dicta. We don't believe that it's dicta. Your Honor, we were all before your Honor some

time ago. And at the time, it was right after the Delaware Supreme Court had ruled, somewhat ambiguously. And Mr. Meister came at that time and said, there are adverse claimants, there is vexation litigation. And your Honor said no. And I think, you know, it wasn't the position we took, but in retrospect we didn't appeal it. We think it was pretty common sense and the legally correct decision, which is, there is no real adversity here and thus no subject matter jurisdiction here under 28 U.S.C. 1335 because, as your Honor wrote, "All potential claimants acknowledge that if Arie and the Orly Trust are deemed -- if the 2004 transfer of shares to Arie and the Orly Trust is found to be invalid, then TPR had the right to sell the shares to the Trump Group and TPR would be entitled to the interpleader funds".

Now, what's significant about this ruling is, this was after the Delaware Supreme Court ruled how it did, because

they're taking the position that once the Delaware Supreme Court didn't affirm under the escrow agreement all bets are off. Section 2.B.3 which talks about -- 2.B.2 -- which talks about affirming, that doesn't count any more. But that's not what your Honor ruled. What your Honor said is that any court of competent jurisdiction can decide the beneficial ownership and that will automatically determine who gets the shares. And your Honor said that the New York courts are well equipped to do so and the Delaware courts are well equipped to do so and probably New York is better, but you're going to leave that to the parties to figure it out. And you sent us all on our way.

So what happened next? Well, TPR didn't file any suits. But this being it the Gengers, TPR didn't get sued just in New York and didn't get sued just in Delaware. We got sued in both. And I just heard that no court has made a finding of beneficial ownership of the shares. Absolutely incorrect. Both courts have made a finding of beneficial ownership of the shares. Both are conclusive and final.

So let me just very briefly go through what happened after your Honor made that ruling. Your Honor knows some of it from one of the prior skirmishes, but let me take you all the way through it just again.

First, there was only one claim about beneficial ownership of the shares -- that's what we're talking about here -- in the 2010 action.

It's important to note, by the way, that the 2010 action that they're asking you to stay for, that was filed before the escrow agreement was signed. So Orly understood and contracted that the determination of beneficial ownership of the shares wasn't going to be determined by the 2010 action; it was going to be determined by Delaware. The 2010 action already existed when she signed that agreement.

THE COURT: Well, you were down in Delaware, right?

DELLAPORTAS: I was, your Honor.

THE COURT: Didn't the chancellor down there, Chancellor Strine, didn't he tell you that once the stipulation was signed in Delaware, that the place to go was New York Supreme, not -- he didn't say anything about filing a new action before me. Isn't that why the stipulation in Delaware

reads, quote, a court in New York, close quote?
DELLAPORTAS: Chancellor Strine said a court in New York. It did not say a state court in New York or a federal court in New York.
THE COURT: He knows the difference between a federal court and a state court. Come on. He referred twice in that proceeding specifically to me. And I read the minutes. I read them yesterday and I read them again this morning. And both place -- he talks about federal court and me, and he even mentions something about the Constitution. If he meant federal court, he would have said federal court.

DELLAPORTAS: He expressed the concern that perhaps there wouldn't be diversity jurisdiction. There is. And even if he meant state court, Chancellor Strine is a great judge but he doesn't have the authority to tell us which court to go to. He kicked us all out of his court and after that --
THE COURT: He certainly did.
DELLAPORTAS: After that it's up to us.
THE COURT: He didn't express a great deal of pleasure with any of you that I read.
DELLAPORTAS: Yes. And I think he's had his fill of the Gengers, as have many judges. But before he did, he entered a final order saying that beneficial ownership of the shares was TPR's and TPR properly sold them.
Let's compare what your Honor ruled versus what he then ruled. Your Honor said, "If the 2004 transfer of shares to Arie Genger to the Orly trust is found to be invalid, then TPR has the right to sell the shares to the Trump Group and TPR would be entitled to the interpleader funds."
Now we did to what Chancellor Strine ruled. He ruled that the shares were invalid. He used the term "void" but it's the same thing. The transfers were void and the stock reverted to TPR and the Trump Group had the right to buy all of the improperly transferred Trans-Resources stock from TPR. And then he said, it's now -- that transaction is complete. These are paragraphs 1 and 26 his ruling.

So his ruling gave exactly the ruling that your Honor said we would need to obtain in order to satisfy the interpleader the last time around.
Now, he didn't rule that we're entitled to the money. He didn't want to rule that. He said go to New York to figure out who's entitled to the money. But that doesn't stop the res judicata or collateral estoppel effect on which the Court ruled, on which your Honor ruled.
Just to be clear, we don't say Chancellor Strine said we're entitled to the money. We say this Court said under express conditions we would be entitled to the money.
THE COURT: You make a big point here, as I understand it, as I read this, that Orly filed a state court action last December and that she never claimed the funds in the original Supreme Court action. Right? You make a point about that, don't you?
DELLAPORTAS: She never claimed ownership of them. What she claimed was that by our obtaining them --
THE COURT: Isn't that what the unjust enrichment

claim is?

DELLAPORTAS: Your Honor said exactly the opposite. With respect to Arie's shares, which is the same shares, when this was before your Honor last time -- and this is on page 24 of your Honor's decision -- your Honor noted the difference. You said, "Well" -- and this is about Arie but it's the same

shares -- "Well, Arie asserts a beneficial ownership in the underlying Trans-Resources shares. In no case does he have a claim against the interpleaded funds themselves. Instead, Arie's numerous counterclaims seek money damages for a breach of fiduciary duties that are ancillary to and beyond the scope of the Skadden interpleader."

That is the same thing here. They have money damages claims. Your Honor asked exactly the right question: If they give us the money, do they still have money damages claims? Absolutely. Absolutely they still have money damages claims. And maybe they'll win and maybe they will be worth more than 10.3, maybe they will be less than 10.3. But what's been noted, that the first element of a claim for unjust enrichment is that we were enriched. And so far we're being sued for unjust enrichment and we haven't been enriched. So our point is, at least allow us to be enriched. And then we can have a trial over whether it was just or unjust.

THE COURT: Let me ask you one more question and I'll wrap it up. Are you saving time for rebuttal too?

DELLAPORTAS: I will save a couple minutes. But I have a couple of great points, your Honor.

THE COURT: Let me ask you this. You're arguing that the Delaware stipulation satisfies section 2.B.2 of the escrow agreement, right?

DELLAPORTAS: It does, your Honor.

THE COURT: OK. Well, I don't know whether that's technically true. Aren't you really making a different argument? Aren't you really making an argument that there's a drafting error here and that it would be consistent with the spirit of the agreement, not with the verbiage? Isn't that what you're preliminarily saying?

DELLAPORTAS: We're arguing two things, your Honor. We make both points it our papers. Number one is that this has been litigated. And once it's been litigated it doesn't matter that somebody comes up with a clever argument after the fact. They had an obligation. If they thought it could only be the Delaware Supreme Court, they had to speak up again, because if that were the case, then we should have been before your Honor two years ago and had this resolved. But they said no. They took the opposite position. They said it's impossibly to be vexatious because everybody agrees how this thing should be read. Now they are saying, never mind, it actually should be read some other way.

In the courts we only get to litigate things once, your Honor. And whether it's res judicata or collateral estoppel --

THE COURT: Not in this case.

DELLAPORTAS: Well, there's a first time for everything, your Honor. And that's how it was interpreted by

25 the Court. And it was absolutely a necessary finding to the

decision, but it's on what the Court pinned its finding of lack of diversity. That's where lack of subject matter jurisdiction came from. If they had said then that, oh, you can only have the Delaware Supreme Court -- the Delaware Supreme Court had already dismissed the case at that point. But your Honor said -- and they agreed, they urged this result -- that any court of competent jurisdiction can decide it.

So now we haven't had one, we've had two courts, your Honor, who have ruled on beneficial ownership. And that's, I think, something we're missing here.

Justice Jaffe, on January 3rd, 2012, issued her decision where they only had one count of beneficial ownership. If you look at the third amended supplemental complaint, Count One is their count seeking beneficial ownership of the shares, which is what we're talking about here. And in it they sought the following relief: The 2004 transfer should be undone. All the shares should come back to TPR. TPR should give them to TPR2, a new company. Arie should be put in control of TPR2. And then 50 other ridiculous events.

This goes before Justice Jaffe, and Justice Jaffe dismisses it. Justice Jaffe rules, quote, Arie seeks to undo the Delaware court's adverse findings against him and the Trump Group's right to buy the invalidly transferred shares notwithstanding the fact that they were transferred as a result of his misrepresentation in the divorce. In any event, any

equitable or contractual right in favor of Arie to reform the diverse stipulation does not override the preexisting contractual right of the Trump Group to purchase the invalidly transferred shares." So she threw out their only claims of beneficial ownership.

It goes up on appeal, your Honor -- and your Honor asked before it. It doesn't go up on appeal on that issue. I'd like to read to you, because this is very important -- and this happened after the last time we were here before your Honor. Last time your Honor said the beneficial ownership claim is on life support or almost dead but not quite dead. Since your Honor made that ruling, both Arie and Orly have pulled the plug on that. And so this is from her suit, this is from her brief. She says, "In June 2013, Orly and Arie entered into a settlement agreement with the Trump Group that resolved all issues between them in this case. By this settlement, Orly settled her individual claims and, as a result, is no longer seeking beneficial ownership of the Orly Trust GRI shares."

Now, she says she still wants the money. Good for her. But the shares, that's no longer pending in any court. It was conclusively decided by Justice Jaffe. It was conclusively decided by Chancellor Strine.

Now, Chancellor Strine read a decision. He thinks she's got -- Orly's got a good unjust enrichment claim. Maybe he'll come and testify for her. I don't know. But that's not

what we're here for today. We're not here on Orly's money damages claims. Your Honor said time and again, this Court is not going to hear money damages claims again. Those are in the state court for better, for worse. We respect that decision. We're not seeking to challenge it. All we're seeking to do is implement the very strict ruling of this Court on June 12th that if we satisfied certain conditions, that we would be entitled to the funds. We have satisfied those conditions.

THE COURT: OK. You saved time for rebuttal.

DELLAPORTAS: Very briefly, your Honor?

THE COURT: Very briefly, if you're going to do rebuttal.

DELLAPORTAS: You asked if we proceed under 2.B.2. And we do proceed under 2.B.2. We don't think it's a drafting error. We think that, inconsistent with the case we cited in our brief, that it needs to be read that every provision of an escrow agreement needs to be read to fulfill the overall purpose. And the overall purpose of this agreement was, if we owned the shares and we sold the shares, to give us our proceeds from selling the shares. It's not complicated.

We also proceed under 2.B.5. We made a written request under 2.B.5. We said, why don't we all just agree, why don't we all not be Gengers for once in our life and agree just to release this, subject to all your money damages claims. And we made that on November 18th. That's Exhibit C to our papers.

They responded, no, we object. That's Exhibit D to their papers.

When you get a written letter --

THE COURT: All right. Come on.

DELLAPORTAS: Yes. When you get a written request and you have an objection --

THE COURT: Thank you. Save your time for rebuttal.

DELLAPORTAS: -- the only way for the escrow agent to release the funds is by order of the court. So at this point we need an order of some court, and we believe this court is the correct court. Thank you, your Honor.

THE COURT: Thank you.

All right. Now, who is going to argue here on behalf of Pedowitz & Meister?

MR. MEISTER: I would, your Honor, but I think it may make sense that Ms. Bachman argue briefly on behalf of Ms. Genger.

THE COURT: All right.

MS. BACHMAN: Good afternoon, your Honor.

THE COURT: Good afternoon.

MS. BACHMAN: I do not believe I'll need any time for rebuttal because I'll be very brief.

As I understand it, Ms. Genger's crossclaim, counterclaim here was pursuant to the settlement agreement that the parties have made that the Orly Trust was entitled to the

proceeds, which are currently being held in escrow. As this Court is aware from the numerous papers that have been filed, Justice Jaffe tells us that settlement agreement was either void or voidable, and subsequently on appeal to the First Department, the First Department affirmed that decision.

Accordingly, it seems that the logic behind Ms. Genger's claims is now in jeopardy and therefore we don't object if this Court would direct that the escrow be given to TPR. TPR has represented to the Court and there is an oral understanding, to my knowledge, that if on further appeal of the First Department decision the settlement agreement is deemed to be valid, then TPR will act in accordance with the settlement agreement and return the money to the trust.

THE COURT: Let me ask you this question. You represent Dalia now, right?

MS. BACHMAN: That is correct, your Honor.

THE COURT: Personally, right?

MS. BACHMAN: As the trust -- her role here, I believe, is as the trustee of the trust.

THE COURT: Well, how can she do both? She is the trustee for the Orly Trust. Right?

MS. BACHMAN: That is correct.

THE COURT: And as I read Chancellor Strine's -- now he's chief justice down there, chief judge. As I read his remarks, he kept suggesting that she no longer should be

trustee, didn't he? Did you read that?

MS. BACHMAN: I am familiar with that. To my knowledge, your Honor, the surrogate court in New York has, at least to date, deemed that Dalia is an appropriate representative of the trust.

THE COURT: Aren't she and Arie estranged?

MS. BACHMAN: They are clearly at odds, your Honor. But that does not -- that's not, if you will -- in the structure that we have of trusts, I believe that a beneficiary does not necessarily have the discretion to choose the trustee. It's the trust document itself that determines who should be the trustee and how that trustee is appointed. And until the surrogates court rules otherwise, I believe that she is the appropriate representative of the trust.

THE COURT: All right.

Anything else you want to say?

MS. BACHMAN: That's all, your Honor.

THE COURT: Thank you.

MS. BACHMAN: Thank you.

THE COURT: I'll hear from you, Mr. Meister, briefly.

MR. MEISTER: Your Honor, Robert Meister for Pedowitz & Meister, pro se.

I also will be brief. I don't think I will need any time for rebuttal.

First, as trustee -- escrow agent, I should say -- we

received multiple claims for the same proceeds. We didn't commence an interpleader action. Rather, we filed an answer using rule interpleader, defense of interpleader.

I heard my colleague, Mr. Griver, say that the escrow agreement says we can't do that. But I've read the escrow agreement many times. In fact, I blush to say I drafted it. And it doesn't say that. It says that if there are conflicting claims, the escrow agent can, among other things, do nothing. It also says other things that it may do. It doesn't say anything that it can't do, in terms of the interpleader.

So while the escrow agent could have started an interpleader seeking arbitration, we didn't. We didn't start any interpleader. And I don't believe that even if the agreement purported to prevent the escrow agent from taking advantage of federal law, that that would be lawful. But we don't have to worry about that. It didn't.

Why do we like interpleader as opposed to your Honor just saying, here's judgment, here's the proceeds where the proceeds go, the way any normal case would be decided? The interpleader gives the parties who have -- whoever the Court determines has the right to the money -- gives them the same thing. It gives the interpleader, as escrow agent, a discharge. And since my colleague, Mr. Griver, has come up with numerous creative theories in the course of these litigations, in particular his December action, which seeks

damages against the escrow agent for not turning all the funds over to Orly, we think that discharge by this Court would surely be something good to have, something we're entitled to as a matter of law.

The only other thing I would say to the Court is, I did check the account. The current balance in the escrow is $10,376,163.20. That's going to change on April 30. So I take it that when the Court decides this, if the Court decides that the money should go to someone or the other --

THE COURT: It can be tomorrow.

MR. MEISTER: If it's tomorrow --

THE COURT: Tomorrow's April 30th.

MR. MEISTER: It is. It is. The way Chase credits things, I send out a notice to all the parties every month. The credit comes in on April 30th. Not in a huge amount of money. It's now earning 0.15 percent interest.

THE COURT: Yes. I'm aware of the bank statements.

MR. MEISTER: The only thing that I would say apropos of the claim against the escrow agent is that there was an objection to the Orly claim. It's attached to my papers. The notice went out. Mr. Griver says he doesn't remember receiving it. His client doesn't open her mail, so it's not a problem there. But the point is, the escrow agreement does not require the escrow agent to send out notices of objection. It does require notices of claims. There's no argument that notices of

claims weren't sent out. So I don't see how the escrow agent can be faulted in that case.

And with that I'll just remind your Honor of the old Russian proverb, which I should have borne in mind when agreeing to become here, as escrow agent, that no good deed remains unpunished.

THE COURT: Thank you.

All right. So first we're going to have Mr. Griver's rebuttal. Go ahead.

MR. GRIVER: Thank you, you, your Honor. As demonstrated, TPR's plea is that you allow it to ignore the escrow agreement because it's as if they had met its requirements. Orly gave up fundamental rights to reach the specific language of the escrow agreement. They admit they don't need it.

They say instead that beneficial ownership has been decided. Well, look at what the New York court said on May 29, 2013. And this was at page 3 of our memo. It says, "Nor can TPR's unilateral declaration of ownership be reconciled with the undisputed fact that the issues of ultimate beneficial ownership in such shares and the related proceeds have not yet been judicially determined by a court of competent jurisdiction." Look at what you said just one week before they came in and said, oh, it's been determined. You said, "Therefore, it is inaccurate for TPR to suggest that the issue

of beneficial ownership is conclusively resolved."

What Mr. Dellaportas does is, he mixes and matches the arguments of Arie Genger and Orly Genger. I am in front of you have representing Orly Genger and the Orly proceeds and the Orly shares. Arie Genger is completely and entirely different. Look at what your Honor said about what Orly was seeking to do. "Orly moves to dismiss the federal action, to which they are party, and asks the Court to stay the Delaware court chancery action so the merits of their claim can proceed in New York Supreme Court." That's what Orly asked for. That's on page 15 of your decision dated June 14, 2012. Orly didn't say, I don't care where it's being decided. She said it should be in front of the New York State court.

And your Honor went on to say that the decision on beneficial ownership does not void or amend the escrow agreement. You have said that the proceeds will be provided pursuant to the escrow agreement that all of the parties contracted to.

As far as the Delaware stipulation is concerned, your Honor, which, Orly has no part in that proceeding or in the stipulation, paragraph 1 just references -- it said "in an action styled TR Investments, LLC, the Court found that" -- it isn't making new findings. It is just memorializing what happened before. It does not go on to say, but those findings as to the Orly Trust and the Orly Trust shares and the Orly

proceeds have been voided by the Delaware Supreme Court -- which is exactly what happened.

Paragraph 2 does not say -- and Mr. Dellaportas said this but it's not true. It does not say TPR had beneficial ownership. All paragraph 2 says is that the Trump Group owns those shares. It talks about the buyer. It does not talk about the seller.

In paragraph 3, Dalia and TPR get together and try and amend the escrow agreement to say, well, you can go to a court of competent jurisdiction. But paragraph 9 of the escrow agreement, in two places, says everybody has to agree. And they keep forgetting about Orly and they keep forgetting about the fact that Orly is a party to this.

And finally, your Honor, it can't be a decision of TPR's right to the sale of proceeds because --

THE COURT: Hold it. Slowly. Slowly.

MR. GRIVER: OK. It cannot be, your Honor, a decision of TPR's right to the sale of proceeds, because it specifically memorializes the fact that those claims were dismissed prior to this stipulation. That was language that acknowledged the fact

TPR chose to dismiss its claims and as a result the stipulation has nothing do with its rights to those proceeds.

Your Honor, I think that they're ignoring Orly at every stage of the proceeding and ignoring the agreement that they reached with Orly in the escrow agreement. It runs

through this entire case. The escrow agent, right, had a clear conflict of interest. We raised it. We've raised it in the New York State action. The waiver that he says he obtained, he never obtained it from the beneficiary of the trust. He went to his client Dalia and said, is it OK if I represent you and somebody else. But he never went and say, hey, how can I do this. For Dalia to stand up as trustee and say, oh, give it to TPR, is exactly why we have been trying through Dalia for years now, why we objected to appointment in the first place, and why Dalia was recently found to have violated her fiduciary duties in one of the secret agreements that she entered into with TPR.

THE COURT: You said "finally" about five minutes ago.

MR. GRIVER: Well, your Honor, then I'm pleased to say that I am finally done.

DELLAPORTAS: One minute?

THE COURT: Yes. There is a little time. Go ahead.

DELLAPORTAS: I just wanted to respond to a couple things that were said. It was alleged that we've mixed Arie and Orly. Exhibit N to our papers, page 26, is Orly's appellate brief, which was filed with the Appellate Division after your Honor ruled that the beneficial ownership of the shares was on life support but not yet dead. And then Orly says she settled with the Trumps and, quote, Orly is no longer seeking beneficial ownership of the Orly Trust PRI shares.

Beneficial ownership is over, your Honor, of the

shares. Now they say, now we want the money. Great. But that's not what the ruling is, your Honor.

They also said that Chancellor Strine's ruling, paragraph 2, speaks only as the buyer and not the seller. Absolutely incorrect. What Chancellor Strine ruled in paragraph 2 was, "The Trump Group, having closed on the purchase of the so-called Orly Trust shares" -- here's the important part -- "pursuant to and under the terms of the side letter agreement between TPR and the Trump Group." That's the ruling. The side letter agreement is in the record. That's a contract whereby we sold those shares to them. Exactly the ruling your Honor said we needed to get in order to get our proceeds.

We've gotten the ruling that the Court asked us to get. We would now like our proceeds. Thank you very much, your Honor.

THE COURT: Thank you. All right. Decision is reserved. Thanks very much.

MR. GRIVER: Thank you, your Honor.

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